

Public Sector Reform Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Public Sector Reform Bill 2009

A Bill for

An Act to amend the *Public Sector Management Act 1994* and for related purposes.

The Parliament of Western Australia enacts as follows:

1
2
3
4
5
6
7
8
9

Part 1 — Preliminary

1. Short title

This is the *Public Sector Reform Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Public Sector administration amendments**

2 **Division 1 — *Public Sector Management Act 1994* amended**

3 **3. Act amended**

4 This Division amends the *Public Sector Management Act 1994*.

5 **4. Section 3 amended**

6 (1) In section 3(1) delete the definitions of:

7 *approved*

8 *code of ethics*

9 *Commissioner*

10 *public sector standard*

11 *public service notices*

12 *special inquirer*

13 *special inquiry*

14 (2) In section 3(1) insert in alphabetical order:

15

16 *code of ethics* means a code of ethics referred to in
17 section 21(1) and established under the
18 Commissioner's instructions;

19 *Commissioner* means the person holding the office of
20 Public Sector Commissioner established by
21 section 16(1);

22 *Commissioner's instructions* means instructions issued
23 under section 22A;

24 *improvement action* means any one or more of the
25 following actions by an employing authority in respect
26 of an employee for the purpose of improving the
27 performance or conduct of the employee —

28 (a) counselling;

29 (b) training and development;

Public Sector Reform Bill 2009

Part 2 Public Sector administration amendments

Division 1 Public Sector Management Act 1994 amended

s. 5

- 1 (c) issuing a warning to the employee that certain
2 conduct is unacceptable or that the employee's
3 performance is not satisfactory;
- 4 (d) any other action of a similar nature;
- 5 **public sector notice** means a notice issued by or under
6 the authority of the Commissioner for the purposes of
7 this Act that is published as a public sector notice in
8 accordance with the Commissioner's instructions;
- 9 **public sector standard** means a public sector standard
10 referred to in section 21(1) and established under the
11 Commissioner's instructions;
- 12 **special inquirer** means a person or persons appointed
13 under section 24H to carry out a special inquiry;
- 14 **special inquiry** means a special inquiry held under
15 section 24H;
- 16

17 (3) Delete section 3(2).

18 **5. Section 4 amended**

19 Delete section 4(1) and insert:

20

- 21 (1) The Commissioner is deemed to be the chief executive
22 officer of the department principally assisting in the
23 administration of this Act.
- 24

25 **6. Section 5 amended**

26 In section 5(1) in the definition of **employing authority**
27 paragraph (a) delete "Minister;" and insert:

28

29 Commissioner; or

30

1 **7. Part 2 heading replaced**

2 Delete the heading to Part 2 and insert:
3

4 **Part 2 — Public Sector principles**
5

6 **8. Part 2 Division 1 heading deleted**

7 Delete the heading to Part 2 Division 1.

8 **9. Section 8 amended**

9 After section 8(2) insert:
10

11 (3) For the purposes of this Act a proper assessment of
12 merit in a selection process must be carried out in
13 accordance with the relevant Commissioner's
14 instructions and does not always require a competitive
15 assessment of merit.
16

17 **10. Section 9 amended**

18 Delete section 9(a)(ii) and “and” after it and insert:
19

20 (ii) the Commissioner's instructions, public
21 sector standards and codes of ethics; and
22

23 **11. Part 2 Division 2 deleted**

24 Delete Part 2 Division 2.

1 **12. Part 2 Division 3 heading replaced**

2 Delete the heading to Part 2 Division 3 and insert:

3

4 **Part 3A — Public Sector Commissioner**

5 **Division 1 — Public Sector Commissioner**

6

7 **13. Section 16 replaced**

8 Delete section 16 and insert:

9

10 **16. Public Sector Commissioner**

11 (1) An office of Public Sector Commissioner is
12 established.

13 (2) The office of Public Sector Commissioner is not an
14 office in the Public Service.

15

16 **14. Section 17 amended**

17 After section 17(3) insert:

18

19 (4) Before performing the functions of Commissioner for
20 the first time, the Commissioner must make a
21 declaration before the Governor in the form in
22 Schedule 4.

23

24 **15. Section 19 amended**

25 After section 19(3) insert:

26

27 (4) Subject to any determination under subsection (3), the
28 Commissioner is entitled to leave of absence and other

1 conditions of service as applicable to public service
2 officers.
3

4 **16. Section 20 amended**

5 Delete section 20(4) and (5) and insert:
6

- 7 (4) If —
8 (a) a person immediately before appointment as
9 Commissioner occupied an office, post or
10 position in a department or organisation; and
11 (b) the person's term of office as Commissioner
12 expires by effluxion of time and the person is
13 not reappointed to the office; and
14 (c) but for the appointment as Commissioner, the
15 person would still be entitled to hold the office,
16 post or position referred to in paragraph (a),

17 the person is entitled to be appointed to an office, post
18 or position in a department or organisation of at least
19 the equivalent level of classification as the office, post
20 or position that the person occupied immediately
21 before appointment as Commissioner.
22

23 **17. Part 3A Division 2 heading inserted**

24 After section 20 insert:
25

26 **Division 2 — Functions of Commissioner**
27

1 **18. Section 21A inserted**

2 Before section 21 insert:

3

4 **21A. General functions of Commissioner**

5 The functions of the Commissioner include the
6 following —

- 7 (a) to promote the overall efficiency and
8 effectiveness of the Public Sector, having
9 regard to the principles set out in section 7;
- 10 (b) to advise Ministers, chief executive officers and
11 chief employees of changes, improvements and
12 management practices which, in the opinion of
13 the Commissioner, should be implemented in
14 order to improve the efficiency and
15 effectiveness of the whole or any part of the
16 Public Sector;
- 17 (c) to plan for the future management and
18 operation of the Public Sector;
- 19 (d) to perform other functions that are conferred on
20 the Commissioner under this Act or any other
21 Act.

22

23 **19. Section 21 amended**

24 (1) In section 21(1):

25 (a) in paragraphs (a) and (b) delete “establish” and insert:

26

27 issue Commissioner’s instructions establishing

28

29 (b) in paragraph (f) delete “section 97(1)(a);” and insert:

30

31 section 97(1)(a).

32

- 1 (c) delete paragraphs (g) to (j).
- 2 (2) Delete section 21(4).
- 3 (3) After section 21(8) insert:
- 4
- 5 (9A) The Commissioner may by order published in the
6 *Gazette* exempt the whole or any part of any public
7 sector body from compliance with the whole or any
8 part of a public sector standard or code of ethics.
- 9 (9B) The Commissioner may by order published in the
10 *Gazette* repeal or amend an order made under
11 subsection (9A).
- 12
- 13 (4) Delete section 21(11) and insert:
- 14
- 15 (11) To the extent that —
- 16 (a) a public sector standard is inconsistent with a
17 code of ethics, a code of conduct or another
18 Commissioner’s instruction, the public sector
19 standard prevails; or
- 20 (b) a code of ethics is inconsistent with a code of
21 conduct or another Commissioner’s instruction
22 (other than a Commissioner’s instruction
23 establishing a public sector standard), the code
24 of ethics prevails.
- 25

26 Note: The heading to amended section 21 is to read:

27 **Public sector standards, codes of ethics and codes of conduct**

1 **20. Sections 22A to 22G inserted**

2 After section 21 insert:

3

4 **22A. Commissioner's instructions**

5 (1) The Commissioner may issue written instructions
6 concerning the following —

7 (a) the management and administration of public
8 sector bodies;

9 (b) the management and administration of the
10 Senior Executive Service;

11 (c) human resource management, including the
12 disposition of employees and offices under
13 section 22B;

14 (d) official conduct;

15 (e) the taking of improvement action;

16 (f) dealing with suspected breaches of discipline,
17 disciplinary matters and the taking of
18 disciplinary action, under Part 5 Division 3;

19 (g) any other matter in respect of which
20 Commissioner's instructions are required or
21 permitted under this Act;

22 (h) any other matter in connection with the
23 functions of the Commissioner in respect of
24 which the Commissioner considers it is
25 necessary or desirable to issue instructions.

26 (2) The Commissioner's instructions must not be
27 inconsistent with this Act and must have regard to the
28 principles set out in sections 7, 8 and 9.

29 (3) The Commissioner's instructions may apply —

30 (a) generally; or

- 1 (b) to a public sector body or class of public sector
2 body specified in the instructions; or
3 (c) to an office or class of office specified in the
4 instructions; or
5 (d) to an employee or class of employees specified
6 in the instructions.
- 7 (4) Except as provided in section 21, the Commissioner's
8 instructions need not be published in the *Gazette* but
9 must be made publicly available in such manner as the
10 Commissioner thinks appropriate.
- 11 (5) The Commissioner may amend or revoke the
12 Commissioner's instructions.
- 13 (6A) The Commissioner must, before issuing, amending or
14 revoking a Commissioner's instruction, consult such
15 persons as the Commissioner considers it desirable and
16 practicable to consult.
- 17 (6) The Commissioner's instructions are not subsidiary
18 legislation for the purposes of the *Interpretation*
19 *Act 1984*.

20 **22B. Disposition of employees and offices**

21 When departments or organisations are established in
22 place of existing departments or organisations or by the
23 amalgamation or division of existing departments or
24 organisations, the Commissioner may effect the
25 disposition of offices, posts and positions and
26 employees and such other consequential changes as
27 appear necessary to give effect to the change in
28 departments or organisations.

1 **22C. Reports to Ministers**

2 The Commissioner may report from time to time to the
3 Minister responsible for a public sector body on the
4 compliance or non-compliance by the public sector
5 body and employees in the public sector body with —

- 6 (a) the principles set out in sections 8(1)(a), (b) and
7 (c) and 9; and
8 (b) public sector standards, codes of ethics and
9 codes of conduct.

10 **22D. Annual report**

11 (1) The Commissioner must in each year prepare a report
12 on the following —

- 13 (a) the state of administration and management of
14 the Public Sector;
15 (b) the compliance or non-compliance by public
16 sector bodies and employees, either generally
17 or in particular, with the principles set out in
18 sections 8(1)(a), (b) and (c) and 9 and with
19 public sector standards, codes of ethics and
20 codes of conduct;
21 (c) any other matters arising out of the
22 performance of the Commissioner's functions
23 that are, in the opinion of the Commissioner, of
24 such significance as to require reporting in that
25 manner.

26 (2) A report required under subsection (1) may be prepared
27 and dealt with in conjunction with any report required
28 under the *Financial Management Act 2006* by the
29 Commissioner in his or her capacity as the accountable
30 authority of the department principally assisting in the
31 administration of this Act.

1 **22E. Other reports**

2 The Commissioner may, in addition to the annual
3 report required under section 22D(1), at any time
4 prepare a report on a matter referred to in
5 section 22D(1).

6 **22F. Reports under section 22D or 22E must be laid**
7 **before Parliament**

8 (1) Within 14 days after signing a report prepared under
9 section 22D or 22E, the Commissioner is to transmit a
10 copy of the report to each House of Parliament.

11 (2) If —

12 (a) when the Commissioner is ready to transmit a
13 report under subsection (1), a House of
14 Parliament is not sitting; and

15 (b) the Commissioner is of the opinion that that
16 House will not sit during the remainder of the
17 period referred to in subsection (1),

18 the Commissioner must transmit a copy of the report to
19 the Clerk of that House.

20 (3) Subsections (1) and (2) do not apply in relation to a
21 report prepared under section 22D if the report is
22 prepared and dealt with as provided for in
23 section 22D(2).

24 (4) A copy of a report transmitted to the Clerk of a House
25 of Parliament under subsection (2) is taken to have
26 been laid before the House.

27 (5) The laying of a copy of a report before a House that is
28 taken to have occurred under subsection (4) is to be
29 reported to the House by the Clerk, and recorded in the
30 Votes and Proceedings or Minutes of Proceedings, on
31 the first sitting day of the House after the receipt of the
32 copy.

1 **22G. Powers**

2 The Commissioner has all the powers that are needed
3 for the performance of the Commissioner's functions.
4

5 **21. Section 22 amended**

6 (1) In section 22 delete "The" and insert:

7

8 (1) The

9

10 (2) At the end of section 22 insert:

11

12 (2) In particular, except as provided in this Act, the
13 Commissioner is not subject to direction by the
14 Minister or any other person in the performance of the
15 Commissioner's functions.

16 (3) Section 32 does not apply to or in relation to the Public
17 Sector Commissioner.

18

19 **22. Section 23 replaced**

20 Delete section 23 and insert:

21

22 **23. Delegation by Commissioner**

23 (1) The Commissioner may delegate to a person any power
24 or duty of the Commissioner under another provision
25 of this Act or any other Act.

26 (2) A delegation under this section must be in writing and
27 signed by the Commissioner.

28 (3) A person to whom a power or duty is delegated under
29 this section cannot delegate that power or duty.

- 1 (4) A person exercising or performing a power or duty that
2 has been delegated to the person under this section is
3 taken to do so in accordance with the terms of the
4 delegation unless the contrary is shown.
- 5 (5) Nothing in this section limits the ability of the
6 Commissioner to perform a function through an officer
7 or agent.

8

9 **23. Part 3A Division 3 inserted**

10 After section 23 insert:

11

12 **Division 3 — Reviews, special inquiries**
13 **and investigations**

14 **Subdivision 1 — Reviews**

15 **24A. Terms used**

16 In this Division —

17 *authorised person* has the meaning given in
18 section 24C;

19 *review* means a review conducted under section 24B.

20 **24B. Reviews**

- 21 (1) The Commissioner may on his or her own initiative
22 conduct a review in respect of part or all of the
23 functions, management or operations of one or more
24 public sector bodies.
- 25 (2) The Minister may by written notice direct the
26 Commissioner to conduct a review in respect of part or
27 all of the functions, management or operations of one
28 or more public sector bodies.

- 1 (3) The text of a direction given under subsection (2) is to
2 be included in the annual report prepared by the
3 Commissioner under section 22D.
- 4 (4) The Commissioner must comply with a direction given
5 under subsection (2) unless, in the Commissioner's
6 opinion, there are exceptional circumstances for not
7 complying.
- 8 (5) If the Commissioner refuses to comply with a direction
9 given under subsection (2) the Commissioner must
10 prepare written reasons for the failure to comply and
11 cause the text of those reasons to be included in the
12 annual report prepared by the Commissioner under
13 section 22D.

14 **24C. Commissioner may authorise people to perform**
15 **functions**

16 The Commissioner may, by written notice, authorise a
17 person (an *authorised person*) to perform functions
18 under this Subdivision.

19 **24D. Powers of Commissioner and authorised person**

- 20 (1) The Commissioner or an authorised person may for the
21 purposes of a review —
- 22 (a) enter the premises of a public sector body;
- 23 (b) by written notice direct an employee to produce
24 to him or her any document that is in the
25 possession or under the control of the
26 employee;
- 27 (c) inspect any document produced to him or her
28 and retain it for such reasonable period as he or
29 she thinks fit, and make copies of it or any of
30 its contents;
- 31 (d) direct an employee to answer questions.

- 1 (2) An employee who, without reasonable excuse, fails to
2 comply with a direction under subsection (1)(b) within
3 14 days of receiving it commits an offence.
4 Penalty: a fine of \$1 000.
- 5 (3) An employee who, without reasonable excuse, fails to
6 comply with a direction under subsection (1)(d)
7 commits an offence.
8 Penalty: a fine of \$1 000.

9 **24E. Consultation before exercise of powers**

10 The powers conferred by section 24D are exercisable
11 in relation to a public sector body only after
12 consultation with —

- 13 (a) the employing authority of the public sector
14 body; and
15 (b) the Minister —
16 (i) who is responsible for the public sector
17 body; or
18 (ii) to whom the administration of the Act
19 under which the public sector body is
20 established or continued is committed.

21 **24F. Privileges and other protection**

- 22 (1) Despite section 24D, an employee has the same
23 privileges in relation to a requirement imposed under
24 that section as a witness would have in proceedings in
25 the Supreme Court.
- 26 (2) Section 24D does not derogate from —
27 (a) an enactment that imposes a prohibition or
28 restriction on —
29 (i) the availability of any information; or
30 (ii) the production or examination of any
31 document;
32 or

- 1 (b) a privilege or immunity existing by custom or
2 convention and relating to the production of
3 documents or other information of previous
4 Governments of the State.

5 **24G. Report on review**

6 If a review was conducted on the direction of the
7 Minister under section 24B(2), the Commissioner must
8 provide the Minister with a written report on the
9 conduct and findings of the review.

10 **Subdivision 2 — Special inquiries**

11 **24H. Special inquiries**

- 12 (1) The Commissioner may on his or her own initiative —
13 (a) arrange for the holding of a special inquiry into
14 a matter related to the Public Sector; and
15 (b) appoint a person or persons to carry out the
16 special inquiry.
- 17 (2) The Minister may direct the Commissioner to arrange
18 for the holding of a special inquiry into a matter related
19 to the Public Sector.
- 20 (3) A direction given under subsection (2) must specify the
21 matter to be the subject of the special inquiry.
- 22 (4) The text of a direction given under subsection (2) is to
23 be included in the annual report prepared by the
24 Commissioner under section 22D.
- 25 (5) The Commissioner must —
26 (a) comply with a direction given under
27 subsection (2); and
28 (b) appoint a person or persons to carry out the
29 special inquiry,

1 unless, in the Commissioner's opinion, there are
2 exceptional circumstances for not complying.

3 (6) If the Commissioner refuses to comply with a direction
4 given under subsection (2) the Commissioner must
5 prepare written reasons for the failure to comply and
6 cause the text of those reasons to be included in the
7 annual report prepared by the Commissioner under
8 section 22D.

9 **24I. Powers of person conducting special inquiry**

- 10 (1) A special inquirer or a person authorised in writing by
11 a special inquirer may for the purposes of a special
12 inquiry —
13 (a) enter the premises of a public sector body; and
14 (b) by written notice require a person to produce to
15 him or her any document that is in the
16 possession or under the control of the person;
17 and
18 (c) inspect any document produced to him or her
19 and retain it for such reasonable period as he or
20 she thinks fit, and make copies of it or any of
21 its contents.
- 22 (2) Schedule 3 applies to and in relation to a special
23 inquirer.

24 **24J. Procedure and evidence at special inquiries**

- 25 (1) An individual, public sector body or other body may be
26 represented at a special inquiry by a legal practitioner
27 or other agent.
- 28 (2) A special inquirer must act independently in relation to
29 the performance of his or her functions.

- 1 (3) A special inquirer —
2 (a) is not bound by the rules of evidence and may
3 be informed as the special inquirer thinks fit;
4 and
5 (b) must act according to equity, good conscience
6 and the substantial merits of the case and
7 without regard to technicalities and legal forms.
- 8 (4) To the extent that the practice or procedure of a special
9 inquirer is not prescribed by or under this Act, it is to
10 be as the special inquirer determines.
- 11 (5) A special inquirer does not have power to make an
12 award of costs.

13 **24K. Reports on special inquiries**

- 14 (1) A special inquirer must —
15 (a) within such period as the Commissioner
16 requires, prepare a report on the conduct and
17 findings, and any recommendations, of the
18 special inquiry; and
19 (b) immediately after preparing the report, provide
20 the Commissioner with a copy of the report.
- 21 (2) If a special inquiry was held on the direction of the
22 Minister under section 24H(2), the Commissioner must
23 provide the Minister with a copy of the report on the
24 special inquiry provided to the Commissioner under
25 subsection (1)(b).

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Subdivision 3 — Investigations

24. Section 24 amended

Delete section 24(2) and insert:

- (2) A person authorised under subsection (1) must —
 - (a) within such period as the Commissioner requires, prepare a report on the conduct and findings of, and any recommendations resulting from, an investigation by the person; and
 - (b) immediately after preparing the report, provide the Commissioner with a copy of the report.

25. Sections 25, 26 and 27 deleted

Delete sections 25, 26 and 27.

26. Part 3A Division 4 heading inserted

Before section 28 insert:

Division 4 — Acting appointments

27. Section 28 amended

(1) Delete section 28(1) and insert:

- (1) The Governor may, on the recommendation of the Minister, appoint a person to act in the office of Commissioner during a period when —
 - (a) the Commissioner is on leave of absence, or otherwise unable to perform the functions of Commissioner, or is absent from the State; or

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1 (b) the Commissioner is suspended from that office
2 under section 18(3) or (4); or

3 (c) that office is vacant.
4

5 (2) In section 28(3) delete “Commissioner for Public Sector
6 Standards.” and insert:

7

8 Public Sector Commissioner.
9

10 (3) Delete section 28(6) and insert:

11

12 (6) If—

13 (a) a person immediately before appointment as
14 Acting Commissioner under this section
15 occupied an office in a department or
16 organisation; and

17 (b) the person’s period of office as Acting
18 Commissioner ends and the person is not
19 reappointed to the office; and

20 (c) but for the appointment as Acting
21 Commissioner, the person would still be
22 entitled to hold the office referred to in
23 paragraph (a),

24 the person is entitled to be appointed to an office in a
25 department or organisation of at least the equivalent
26 level of classification as the office that the person
27 occupied immediately before appointment as Acting
28 Commissioner.

29 (7) Sections 17(4), 18, 19 and 20(1), (3) and (6) apply to
30 an Acting Commissioner appointed under this section.
31

31

32 Note: The heading to amended section 28 is to read:

33 **Acting Commissioner appointed by Governor**

1 **28. Sections 29A inserted**

2 After section 28 insert:

3

4 **29A. Acting Commissioner appointed by Commissioner**

- 5 (1) If the Governor has not appointed a person under
6 section 28, the Commissioner may appoint a person to
7 act in the office of Commissioner in the circumstances
8 referred to in section 28(1)(a).
- 9 (2) A person must not be appointed under subsection (1)
10 for more than 13 weeks in a 12 month period.
- 11 (3) An appointment under this section —
- 12 (a) may be terminated at any time by the
13 Commissioner; and
- 14 (b) may be expressed to have effect only in the
15 circumstances specified in the instrument of
16 appointment.
- 17 (4) If the Commissioner appoints a person under
18 subsection (1) and the Governor later appoints a person
19 under section 28 whose term of appointment is to begin
20 before the term of the Commissioner's appointee has
21 ended, the appointment of the Commissioner's
22 appointee ceases to have effect on and from the day on
23 which the term of the Governor's appointee begins.
- 24 (5) Sections 18(1) and (2), 19 and 20(1), (3) and (6) apply
25 to an Acting Commissioner appointed under this
26 section.

27 **29B. Matters relevant to all acting appointments**

28 While an Acting Commissioner is acting in the office
29 of Commissioner under section 28 or 29A —

- 30 (a) the Acting Commissioner is to perform all the
31 functions of the Commissioner and any act or

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- 1 thing done by the Acting Commissioner in that
2 performance has the like effect as if it were
3 done by the Commissioner; and
4 (b) any act or thing that is required under a written
5 law to be done to, by reference to or in relation
6 to the Commissioner is taken to be effectually
7 done if done to, by reference to or in relation to
8 the Acting Commissioner; and
9 (c) the Acting Commissioner has the same
10 immunities and independence as the
11 Commissioner.
12

13 **29. Part 2 Division 4 heading replaced**

14 Delete the heading to Part 2 Division 4 and insert:
15

16 **Part 3B — Chief executive officers and**
17 **chief employees**
18

19 **30. Section 29 amended**

20 In section 29(1):

21 (a) delete paragraph (h)(ii) and insert:
22

23 (ii) the relevant Commissioner's
24 instructions, if any;

25 and
26

1 (b) after paragraph (i) insert:

2

3 (ja) where appropriate, to take improvement action
4 in respect of employees employed in that
5 department or organisation; and
6

7 **31. Section 30 amended**

8 In section 30(b) after “comply with” insert:

9

10 the Commissioner’s instructions,
11

12 **32. Section 31 amended**

13 (1) In section 31(1) and (2) delete “guidelines, if any, issued by the
14 Commissioner,” and insert:

15

16 the relevant Commissioner’s instructions, if any,
17

18 (2) In section 31(4) delete “relevant annual report referred to in
19 section 21(1)(i)” and insert:

20

21 annual report prepared by the Commissioner under section 22D
22

23 **33. Section 32 amended**

24 In section 32(1)(b) after “any” insert:

25

26 Commissioner’s instruction,
27

1 **34. Section 33 replaced**

2 Delete section 33 and insert:

3

4 **33. Delegation by chief executive officer or chief**
5 **employee**

6 (1) Subject to any other written law, a chief executive
7 officer or chief employee may delegate any power or
8 duty of the chief executive officer or chief employee
9 under another provision of this Act to —

- 10 (a) a public service officer; or
11 (b) any other employee; or
12 (c) a person who is appointed, employed or holds
13 office in an entity that is —
14 (i) listed in Schedule 1 column 2; and
15 (ii) prescribed for the purposes of this
16 section;
17 or
18 (d) with the approval of the Commissioner, any
19 other person.

20 (2A) The Commissioner must not approve a delegation
21 under subsection (1)(d) unless the Commissioner is
22 satisfied that the delegation is necessary or convenient
23 having regard to —

- 24 (a) the functions of the department or organisation
25 in relation to which the chief executive officer
26 or chief employee has the power or duty; or
27 (b) the specialised knowledge, expertise or
28 resources of the person to whom the power or
29 duty is delegated.

30 (2) The delegation must be in writing and signed by the
31 chief executive officer or chief employee.

- 1 (3) A person to whom a power or duty is delegated under
2 this section cannot delegate that power or duty.
- 3 (4) A person exercising or performing a power or duty that
4 has been delegated to the person under this section is to
5 be taken to do so in accordance with the terms of the
6 delegation unless the contrary is shown.
- 7 (5A) If a power or duty is delegated under subsection (1),
8 the power or duty is, when exercised or performed by
9 the delegate, to be taken to be exercised or performed
10 by the person who delegated it.
- 11 (5) Nothing in this section limits the ability of the chief
12 executive officer or chief employee to perform a
13 function through an officer or agent.
14

15 **35. Section 35 amended**

- 16 (1) In section 35(1) delete “Minister —” and insert:
17
18 Commissioner —
19
- 20 (2) After section 35(3) insert:
21
- 22 (4) The Minister may direct the Commissioner to make a
23 recommendation to the Governor under subsection (1)
24 in respect of a department or departments specified in
25 the direction, and the Commissioner must comply with
26 the direction.
- 27 (5) The text of a direction given under subsection (4) is to
28 be included in the annual report prepared by the
29 Commissioner under section 22D.
30

1 **36. Section 36 amended**

2 (1) In section 36(1)(c) delete “approved procedures” and insert:

3

4 the Commissioner’s instructions

5

6 (2) Delete section 36(4).

7 **37. Section 38 amended**

8 (1) In section 38:

9 (a) delete “For the” and insert:

10

11 (1) For the

12

13 (b) delete “Governor may, on the recommendation of the
14 Minister,” and insert:

15

16 Commissioner may

17

18 (2) At the end of section 38 insert:

19

20 (2) The Commissioner may amend or revoke a
21 determination made under subsection (1).

22

23 **38. Section 40 amended**

24 In section 40(1) delete “in public service notices.” and insert:

25

26 as a public sector notice in accordance with the
27 Commissioner’s instructions.

28

29 **39. Section 42 amended**

30 Delete section 42(2).

1 **40. Section 43 amended**

2 In section 43(3) and (4) delete “Minister may from time to time
3 by notice published in public service notices —” and insert:

4
5 Commissioner may from time to time by notice
6 published as a public sector notice in accordance with
7 the Commissioner’s instructions —
8

9 **41. Section 45 amended**

10 (1) Delete section 45(3) and (4) and insert:

11
12 (3) If —

- 13 (a) there is a vacancy or an impending vacancy in
14 the office of a chief executive officer; and
15 (b) it is not intended to fill the vacancy by
16 transferring a chief executive officer to that
17 office under section 50, or temporarily by
18 directing an employee to act in the office under
19 section 51,

20 the Commissioner must act under this section to enable
21 the filling of that vacancy or impending vacancy.

22 (4) The Commissioner must, for the purposes of
23 subsection (3), invite —

- 24 (a) the Minister; and
25 (b) if the Minister is not the responsible authority
26 of the agency concerned, that responsible
27 authority; and
28 (c) if the responsible authority of the agency
29 concerned is not the Minister responsible for
30 that agency, that Minister,

31 to inform the Commissioner of any matters that they
32 wish the Commissioner to take into account in

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1 recommending a person for appointment to the office
2 referred to in subsection (3).
3

4 (2) Delete section 45(8) to (12) and insert:

5
6 (8) When the Commissioner decides on a person suitable
7 for appointment to the relevant office, the
8 Commissioner must recommend to the Governor that
9 that person be appointed to the relevant office.
10

11 (3) In section 45(13):

- 12 (a) delete “nominated or”;
13 (b) delete “or the Minister, as the case requires.”.

14 **42. Section 46 amended**

15 Delete section 46(1) and insert:

16
17 (1) If the contract of employment of a chief executive
18 officer is about to expire and the chief executive officer
19 has notified the Commissioner that he or she wishes to
20 be reappointed to his or her office of chief executive
21 officer, the Commissioner may —

- 22 (a) recommend to the Governor that —
23 (i) the chief executive officer be
24 reappointed to the relevant office; or
25 (ii) if the chief executive officer has been
26 transferred to the performance of other
27 functions under section 50, the chief
28 executive officer be reappointed to
29 perform those functions at the same
30 level of classification; or
31 (b) notify the chief executive officer that he or she
32 will not be reappointed.
33

1 **43. Section 47 amended**

2 (1) Delete section 47(1) and (2) and insert:

3

4 (1) A chief executive officer must, on appointment under
5 section 45, and at any time when required to do so
6 under the Commissioner's instructions, enter in
7 accordance with the Commissioner's instructions into
8 an agreement with —

9 (a) the Commissioner; and

10 (b) the responsible authority of the agency of the
11 chief executive officer,

12 concerning the performance criteria to be met by the
13 chief executive officer during the period to which the
14 agreement relates.

15 (2) A performance agreement does not take effect until the
16 Minister responsible for the agency concerned (if that
17 Minister is not the responsible authority of the agency)
18 has approved the performance agreement and a note of
19 that approval has been endorsed on the performance
20 agreement.

21

22 (2) In section 47(4) delete “approved procedures,” and insert:

23

24 the Commissioner's instructions,

25

26 **44. Section 48 deleted**

27 Delete section 48.

1 **45. Section 49 amended**

2 In section 49 delete “Minister made under section 48,” and
3 insert:

4
5 Commissioner,

6
7 **46. Section 50 amended**

8 Delete section 50(2) and insert:

- 9
10 (2) Before making a recommendation referred to in
11 subsection (1) the Commissioner must consult —
- 12 (a) the responsible authority of the agency in which
13 the office of the chief executive officer to
14 whom the proposed recommendation relates is
15 located; and
 - 16 (b) the responsible authority of the agency of
17 destination; and
 - 18 (c) if neither of the responsible authorities referred
19 to in paragraphs (a) or (b) is the Minister
20 responsible for the relevant agency, that
21 Minister; and
 - 22 (d) the chief executive officer to whom the
23 proposed recommendation relates.
- 24

25 **47. Section 51 amended**

26 Delete section 51(3) and insert:

- 27
28 (3) The Commissioner must, before giving a direction
29 under subsection (1), consult —
- 30 (a) the responsible authority of the agency
31 concerned; and

1 (b) if that responsible authority is not the Minister
2 responsible for that agency, that Minister.
3

4 **48. Section 53 amended**

5 (1) In section 53(1) delete “approved procedures” and insert:
6

7 the Commissioner’s instructions
8

9 (2) In section 53(3)(a) delete “approved procedures; and” and
10 insert:
11

12 the Commissioner’s instructions; and
13

14 (3) In section 53(5) delete “approved procedures” and insert:
15

16 the Commissioner’s instructions
17

18 **49. Section 56 amended**

19 In section 56(3) delete “Subject to sections 48 and 49, a
20 contract” and insert:
21

22 A contract
23

24 **50. Section 63 amended**

25 In section 63(1)(h) delete “office.” and insert:
26

27 office (unless it is an appointment and the
28 Commissioner authorises the offices being held
29 concurrently by the executive officer).
30

1 **51. Section 64 amended**

2 (1) In section 64(1) delete “approved procedures” and insert:

3

4 the Commissioner’s instructions

5

6 (2) In section 64(2)(a) and 64(3)(a) delete “approved procedures;
7 and” and insert:

8

9 the Commissioner’s instructions; and

10

11 (3) In section 64(4) delete “in public service notices” and insert:

12

13 as a public sector notice in accordance with the
14 Commissioner’s instructions

15

16 **52. Section 67 amended**

17 In section 67(f) delete “position.” and insert:

18

19 position (unless it is an appointment and the
20 Commissioner authorises the offices, posts or
21 positions being held concurrently by that public
22 service officer).

23

24 **53. Section 70 amended**

25 In section 70(1) delete “administration of this Act.” and insert:

26

27 administration of this Part.

28

1 **54. Section 75 amended**

2 (1) In section 75(1) delete “assisting the Minister in the
3 administration of this Act” and insert:

4
5 assisting in the administration of this Part
6

7 (2) In section 75(2):

8 (a) in paragraph (b) delete “office.” and insert:

9
10 office; or
11

12 (b) after paragraph (b) insert:

13
14 (c) an employee in the department principally
15 assisting in the administration of this Part as if
16 the employee were seconded to occupy that
17 office.
18

19 (3) In section 75(3):

20 (a) delete “subsection (2)(b) —” and insert:

21
22 subsection (2)(b) or (c) —
23

24 (b) delete “by such person or persons as are appointed by
25 the Minister.” and insert:

26
27 in accordance with the Commissioner’s instructions by
28 a person or persons appointed by the chief executive
29 officer of the department principally assisting in the
30 administration of this Part.
31

1 **55. Section 79 amended**

2 (1) In section 79(4) delete “an employee —” and insert:

3

4 an employee other than a chief executive officer —

5

6 (2) After section 79(4) insert:

7

8 (5A) The Governor may, on the recommendation of the
9 Commissioner, terminate the employment in the Public
10 Sector of a chief executive officer whose performance
11 is, in the opinion of the Commissioner, substandard for
12 the purposes of this section.

13 (5B) The Commissioner must consult the responsible
14 authority of the agency of the chief executive officer
15 before making a recommendation under
16 subsection (5A).
17

18 (3) Delete section 79(6).
19

20 **56. Section 93 amended**

21 (1) After section 93(1) insert:

22

23 (2A) The Commissioner must consult with the Minister to
24 whom the administration of the *Industrial Relations*
25 *Act 1979* is committed, before giving an approval
26 under subsection (1).
27

28 (2) Delete section 93(2).

29 (3) Delete section 93(4), (5) and (6).

1 **57. Section 99 deleted**

2 Delete section 99.

3 **58. Section 100 amended**

4 In section 100(1) and (2) delete “approved procedures” and
5 insert:

6

7 the Commissioner’s instructions

8

9 **59. Section 105 amended**

10 In section 105(2):

11 (a) in paragraph (a)(ii) delete “the Minister in the
12 administration of this Act” and insert:

13

14 in the administration of Part 4

15

16 (b) delete paragraph (b)(i) and “or” after it and insert:

17

18 (i) the Minister and other Ministers; or

19

20 **60. Section 108A inserted**

21 After section 107 insert:

22

23 **108A. Delegation by Ministers**

24 (1) The Minister may delegate to any person any power or
25 duty of the Minister under another provision of this
26 Act.

27 (2) A delegation under this section must be in writing
28 signed by the Minister.

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- 1 (3) A person to whom a power or duty is delegated in
2 accordance with this section cannot delegate that power
3 or duty.
- 4 (4) A person exercising or performing a power or duty that
5 has been delegated to the person in accordance with
6 this section is taken to do so in accordance with the
7 terms of the delegation unless the contrary is shown.
- 8 (5) Nothing in this section limits the ability of the Minister
9 to perform a function through an officer or agent.
10

11 **61. Section 108 amended**

- 12 (1) After section 108(1) insert:
13
- 14 (2A) The regulations may make provision for or with respect
15 to any matter for which the Commissioner's
16 instructions can provide.
- 17 (2B) A reference in this Act to a Commissioner's instruction
18 is taken to include a reference to a regulation referred
19 to in subsection (2A).
20
- 21 (2) In section 108(2) after "inconsistent with a" insert:
22
- 23 Commissioner's instruction,
24

25 **62. Part 9 Division 1 heading inserted**

26 After the heading to Part 9 insert:
27

28 **Division 1 — *Public Service Act 1978* repeal and**
29 **transitional provisions**
30

1 **63. Part 9 Division 2 inserted**

2 After section 112 insert:
3

4 **Division 2 — Public Sector Reform Act 2009 Part 2**
5 **amendments: transitional provisions**

6 **113. Transitional provisions**

7 Schedule 7 sets out transitional provisions.
8

9 **64. Schedule 4 replaced**

10 Delete Schedule 4 and insert:
11

12 **Schedule 4 — Form of declaration**

13 [s. 17(4)]

14 I,,
15 sincerely promise and declare that, according to the best of
16 my skill and ability, I will faithfully, impartially and truly
17 execute the office and perform the functions of Public
18 Sector Commissioner according to law.

19

20
.....

21 (Signature of declarant)

21 (Date)
22

23 **65. Schedule 5 amended**

24 (1) In Schedule 5 clause 2(1) delete “Any” and insert:
25

26 Subject to Schedule 7 clause 4(6), any
27

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1 (2) Delete Schedule 5 clause 5(1)(a) and (b) and “or” after
2 paragraph (b) and insert:

3

4 (a) a Commissioner’s instruction; or

5

6 (3) In Schedule 5 clause 5(2) delete “Minister in public service
7 notices.” and insert:

8

9 Commissioner in a notice published as a public sector notice
10 in accordance with the Commissioner’s instructions.

11

12 **66. Schedule 7 inserted**

13 After Schedule 6 insert:

14

15 **Schedule 7 — Public Sector Reform Act 2009 Part 2**
16 **amendments: transitional provisions**

17

[s. 113]

18 **1. Terms used**

19 In this Schedule —

20 **amended Act** means this Act as amended by the *Public*
21 *Sector Reform Act 2009*;

22 **commencement day** means the day on which the *Public*
23 *Sector Reform Act 2009* section 13 comes into operation;

24 **former Commissioner** means the person holding the office
25 of Commissioner for Public Sector Standards under this Act
26 immediately before the commencement day.

- 1 **2. Incumbent CEO remains in office as Public Sector**
2 **Commissioner**
- 3 (1) In this clause —
- 4 *former office* means the office of chief executive officer of
5 the department principally assisting in the administration of
6 Part 3 immediately before the commencement day.
- 7 (2) Despite section 17, if a person held the former office
8 immediately before the commencement day (other than in
9 an acting capacity), that person is to hold office as
10 Commissioner subject to Part 3A Division 1 for a term of
11 5 years beginning on the commencement day as if appointed
12 under section 17, and is eligible to be reappointed to that
13 office.
- 14 **3. Commissioner for Public Sector Standards**
- 15 (1) The former Commissioner is entitled to be employed in the
16 Public Service at the same level of classification as the
17 former Commissioner held immediately before the
18 commencement day until the end of the period for which the
19 former Commissioner was last appointed under this Act to
20 hold office.
- 21 (2) The former Commissioner retains existing and accruing
22 entitlements in respect of leave of absence as if service in
23 the Public Service were a continuation of service in the
24 office of the Commissioner of Public Sector Standards.
- 25 (3) If a person is acting in the office of the Commissioner of
26 Public Sector Standards under section 28 immediately
27 before the commencement day, section 20 as in force before
28 the commencement day continues to apply to that person.
- 29 **4. Approved procedures and other instruments**
- 30 (1) Any procedure or classification system approved under
31 section 3(2) as in force before the commencement day and
32 of effect immediately before that day is to be taken to be,
33 with any necessary modifications, a Commissioner’s
34 instruction.

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- 1 (2) Any public sector standard or code of ethics established by
2 the former Commissioner under this Act and of effect
3 immediately before the commencement day is to be taken to
4 be, with any necessary modifications, a public sector
5 standard or code of ethics for the purposes of the amended
6 Act.
- 7 (3) Any order published under section 25(1)(a) as in force
8 before the commencement day and of effect immediately
9 before that day is to be taken to be, with any necessary
10 modifications, an order published under section 21(9A) of
11 the amended Act.
- 12 (4) Any guidelines issued by the former Commissioner for the
13 purposes of section 31 as in force before the commencement
14 day and of effect immediately before that day are to be taken
15 to be, with any necessary modifications, Commissioner's
16 instructions.
- 17 (5) Any direction given under section 42(2) as in force before
18 the commencement day and of effect immediately before
19 that day is to be taken to be, with any necessary
20 modifications, a Commissioner's instruction.
- 21 (6) Any public service notice of effect immediately before the
22 commencement day is to be taken to be a public sector
23 notice.
- 24 (7) Any approval given by the Minister under section 93(1) as
25 in force before the commencement day and of effect
26 immediately before that day continues to be of effect as if it
27 were an approval given by the Commissioner.
- 28 **5. Reviews, special inquiries and investigations**
- 29 (1) If immediately before the commencement day —
- 30 (a) a review was being carried out under an
31 arrangement by the Minister under section 10 as in
32 force immediately before the commencement day;
33 and
- 34 (b) any employee had been authorised by the Minister
35 to perform functions for the purpose of the review,

1 the review is to be continued as if it were a review the
2 Minister had directed the Commissioner to conduct under
3 section 24B of the amended Act and the employee had been
4 authorised for the purpose of that review by the
5 Commissioner.

6 (2) If immediately before the commencement day, a special
7 inquirer was carrying out a special inquiry under this Act,
8 the special inquirer is to continue to carry out the inquiry as
9 if the special inquirer were appointed under section 24H of
10 the amended Act to carry out the special inquiry.

11 (3) If immediately before the commencement day —
12 (a) an investigation was being carried out under
13 section 24 as in force immediately before the
14 commencement day;
15 (b) any person had been authorised to perform
16 functions for the purpose of the investigation,

17 the investigation is to be continued as if it were an
18 investigation the Commissioner had commenced under
19 section 24 of the amended Act and the person had been
20 authorised for the purpose of that investigation by the
21 Commissioner.

22 **6. Special offices**

23 A special office created under section 36 as in force before
24 the commencement day for the purposes of section 75(1) as
25 in force before that day and in existence immediately before
26 that day continues in existence after that day as if it were
27 created by the chief executive officer of the department
28 assisting in the administration of Part 4.

29 **7. Provisions affecting employment of chief executive**
30 **officers**

31 (1) If —
32 (a) before the commencement day the Minister
33 requested the former Commissioner to act under
34 section 45 as in force before the commencement

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- 1 day to fill a vacancy or impending vacancy in the
2 office of a chief executive officer; and
- 3 (b) the vacancy or impending vacancy is not filled
4 before the commencement day,
- 5 any actions taken by the former Commissioner under that
6 section are to be taken to have been taken by the
7 Commissioner, and the Commissioner may continue to act
8 under section 45 of the amended Act to fill the vacancy.
- 9 (2) If —
- 10 (a) before the commencement day the Minister acted
11 on a matter under section 48 for the purposes of
12 section 46(1) or 49 (as those sections were in force
13 immediately before the commencement day); and
- 14 (b) on the commencement day further action remains to
15 be taken under section 46 or 49 in relation to that
16 matter,
- 17 the Commissioner may continue to act under section 46 or
18 49 of the amended Act as the case requires.
- 19 (3) Any performance agreement of effect immediately before
20 the commencement day continues to be of effect under
21 section 47 of the amended Act.
- 22 (4) If —
- 23 (a) before the commencement day the Minister took
24 action under section 50(2) for the purpose of
25 making a recommendation under section 50(1) (as
26 those provisions were in force before the
27 commencement day); and
- 28 (b) the recommendation has not been made before the
29 commencement day,
- 30 the action referred to in paragraph (a) is to be taken to have
31 been taken by the Commissioner, and the Commissioner
32 may continue to act under section 50 of the amended Act in
33 relation to the recommendation.

- 1 (5) If—
- 2 (a) before the commencement day the Minister took
- 3 action under section 51(3) for the purpose of giving
- 4 a direction under section 51(1) (as those provisions
- 5 were in force before the commencement day); and
- 6 (b) the Minister has not given the direction before the
- 7 commencement day,
- 8 the Commissioner may give the direction under
- 9 section 51(1) of the amended Act as if the action referred to
- 10 in paragraph (a) had been taken by the Commissioner.
- 11 (6) A direction given under section 51(1) as in force before the
- 12 commencement day and of effect before the commencement
- 13 day is to be taken to have been given under section 51 of the
- 14 amended Act by the Commissioner.
- 15 (7) On the commencement day the Commissioner is substituted
- 16 for the Minister as a party to the contract of employment of
- 17 each chief executive officer.
- 18 **8. Continuing effect of things done under section 97**
- 19 A thing done or omitted to be done by the former
- 20 Commissioner under section 97 as in force before the
- 21 commencement day has the same effect after that day as if it
- 22 had been done or omitted under section 97 of the amended
- 23 Act.
- 24 **9. Section 107 directions**
- 25 A direction given under section 107(1) as in force before the
- 26 commencement day and of effect on that day is to be taken
- 27 to be a direction of the Commissioner.
- 28 **10A. General savings — Commissioner**
- 29 (1) A thing done or omitted to be done by, to or in relation to
- 30 the former Commissioner before the commencement day,
- 31 whether under this Act or any other written law, has the
- 32 same effect after the commencement day, to the extent that
- 33 it has any force or significance after that day, as if it had

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Division 1 Public Sector Management Act 1994 amended

s. 66

- 1 been done or omitted by, to or in relation to the
2 Commissioner.
- 3 (2) Subclause (1) does not apply if a contrary intention appears
4 or the context otherwise requires.
- 5 **10. Power to amend subsidiary legislation**
- 6 (1) The Governor, on the recommendation of the Minister, may
7 make regulations amending subsidiary legislation made
8 under any Act.
- 9 (2) The Minister may make a recommendation under
10 subclause (1) only if the Minister considers that each
11 amendment proposed to be made by the regulations is
12 necessary or desirable as a consequence of the enactment of
13 the *Public Sector Reform Act 2009* Part 2.
- 14 (3) Nothing in this clause prevents subsidiary legislation from
15 being amended in accordance with the Act under which it
16 was made.
- 17 **11. Transitional regulations**
- 18 (1) If there is no sufficient provision in this Schedule for
19 dealing with a transitional matter, regulations may prescribe
20 all matters that are required or necessary or convenient to be
21 prescribed for dealing with the matter.
- 22 (2) In subclause (1) —
23 ***transitional matter*** means a matter that needs to be dealt
24 with for the purpose of effecting the transition from an Act
25 (including this Act) as enacted immediately before the
26 commencement day to the Act as amended by the *Public*
27 *Sector Reform Act 2009* Part 2.
- 28 (3) Regulations made under subclause (1) may provide that
29 specified provisions of this Act as in force after the
30 commencement of the *Public Sector Reform Act 2009*, or of
31 subsidiary legislation made under this Act, or of an Act
32 amended by the *Public Sector Reform Act 2009* —
33 (a) do not apply; or

- 1 (b) apply with specified modifications,
2 to or in relation to any matter.
- 3 (4) If regulations under subclause (1) provide that a specified
4 state of affairs is to be taken to have existed, or not to have
5 existed, on and from a day that is earlier than the day on
6 which the regulations are published in the *Gazette* but not
7 earlier than the commencement day, the regulations have
8 effect according to their terms.
- 9 (5) In subclauses (3) and (4) —
10 *specified* means specified or described in the regulations.
- 11 (6) If regulations contain a provision referred to in
12 subclause (4), the provision does not operate so as to —
- 13 (a) affect in a manner prejudicial to any person (other
14 than the State or an authority of the State), the rights
15 of that person existing before the day of publication
16 of those regulations; or
- 17 (b) impose liabilities on any person (other than the
18 State or an authority of the State) in respect of
19 anything done or omitted to be done before the day
20 of publication of those regulations.

21 **12. *Interpretation Act 1984* not affected**

22 The provisions of this Schedule are additional to and do not
23 prejudice or affect the application of the *Interpretation*
24 *Act 1984* Part V.
25

26 **67. Various references to “Minister” amended**

27 In the provisions listed in the Table delete “Minister” (each
28 occurrence) and insert:
29

30 Commissioner
31

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Division 1 Public Sector Management Act 1994 amended

s. 68

1

Table

s. 41(a)(i)	s. 43(8)
s. 44(3)	s. 45(1)
s. 46(2)	s. 50(1)
s. 51(1) and (2)	s. 59(2)
s. 63(1)(g)	s. 77(a)(i)
s. 89(1) and (2)	s. 93(1)
s. 94(3)	s. 107(1)(a)

2

3 **68. Various references to “of the Crown” deleted**

4 In the provisions listed in the Table delete “of the Crown” (each
5 occurrence).

6

Table

s. 3(1) def. of <i>political office holder</i> par. (g), def. of <i>responsible authority</i> par. (b)	s. 3(4)
s. 5(2)(a)(i)	s. 8(2)
s. 41(b)	s. 58(7) def. of <i>statutory office</i>
s. 74(1)	s. 77(b)
s. 79(4) and (6)	s. 105(2)(b)(ii)

1 **69. Various cross-references amended**

2 Amend the provisions listed in the Table as set out in the Table.

3 **Table**

Provision	Delete	Insert
s. 24(1)	sections 12 and 13	sections 24I and 24J
s. 31(3)	section 25(1)	section 21(9A)
s. 87(1)	sections 12 and 13	sections 24I and 24J
Schedule 3	[s. 12(2),	[s. 24I(2),

4 **70. Other provisions amended**

5 Amend the provisions listed in the Table as set out in the Table.

6 **Table**

Provision	Delete	Insert
s. 3(1) def. of <i>agency</i> par. (a)	department	a department
s. 3(1) def. of <i>agency</i> par. (b)	SES	a SES
s. 3(1) def. of <i>breach of discipline</i>	means breach	means a breach
s. 3(1) def. of <i>chief employee</i> par. (a) and (b)	chief employee	a chief employee
s. 3(1) def. of <i>chief employee</i> par. (a)	organisation;	organisation; or

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Division 1 Public Sector Management Act 1994 amended

s. 70

Provision	Delete	Insert
s. 3(1) def. of <i>chief employee</i> par. (c)	person	a person
s. 3(1) def. of <i>chief executive officer</i> par. (a) and (b)	person	a person
s. 3(1) def. of <i>classification system</i>	means system	means a system
s. 3(1) def. of <i>code of conduct</i>	means code	means a code
s. 3(1) def. of <i>compensation</i> after par. (a)		or
s. 3(1) def. of <i>department</i>	means department	means a department
s. 3(1) def. of <i>document</i>	includes tape,	includes a tape,
s. 3(1) def. of <i>employee</i>	means person	means a person
s. 3(1) def. of <i>executive officer</i>	means chief	means a chief
s. 3(1) def. of <i>Minister</i>	means Minister of the Crown	means the Minister
s. 3(1) def. of <i>ministerial officer</i>	means person	means a person

Provision	Delete	Insert
s. 3(1) def. of <i>non-SES organisation</i>	means entity	means an entity
s. 3(1) def. of <i>organisation</i>	means non-SES	means a non-SES
s. 3(1) def. of <i>performance agreement</i>	means agreement	means an agreement
s. 3(1) def. of <i>permanent officer</i>	means person	means a person
s. 3(1) def. of <i>political office holder</i> par. (a)	Minister of the Crown	a Minister
s. 3(1) def. of <i>political office holder</i> par. (b)	Parliamentary	the Parliamentary
s. 3(1) def. of <i>political office holder</i> par. (c)	Parliamentary	a Parliamentary
s. 3(1) def. of <i>political office holder</i> par. (d)	Government	the Government
s. 3(1) def. of <i>political office holder</i> par. (e) and (f)	Leader	the Leader

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Part 2 Public Sector administration amendments

Division 1 Public Sector Management Act 1994 amended

s. 70

Provision	Delete	Insert
s. 3(1) def. of <i>political office holder</i> par. (g)	person	a person
s. 3(1) def. of <i>political office holder</i> after each of par. (a), (b), (c), (d) and (e)		or
s. 3(1) def. of <i>Public Sector</i> after par. (a)		and
s. 3(1) def. of <i>public sector body</i>	agency,	an agency,
s. 3(1) def. of <i>Public Service</i>	means Public	means the Public
s. 3(1) def. of <i>public service officer</i>	means executive	means an executive
s. 3(1) def. of <i>repealed Act</i>	means <i>Public</i>	means the <i>Public</i>
s. 3(1) def. of <i>respondent</i>	means person	means a person
s. 3(1) def. of <i>responsible authority</i> par. (a)	board,	a board,
s. 3(1) def. of <i>responsible authority</i> par. (b)	Minister	the Minister

Provision	Delete	Insert
s. 3(1) def. of <i>responsible authority</i>	means responsible	means a responsible
s. 3(1) def. of <i>senior executive officer</i>	means member	means a member
s. 3(1) def. of <i>Senior Executive Service</i>	means Senior	means the Senior
s. 3(1) def. of <i>SES organisation</i>	means entity	means an entity
s. 3(1) def. of <i>special disciplinary inquiry</i>	means special	means a special
s. 3(1) def. of <i>term officer</i>	means person	means a person
s. 3(5)	Crown (each occurrence)	State
s. 5(1) def. of <i>employing authority</i> after each of par. (b) and (c)(i)		or
s. 8(1) after each of par. (a), (b) and (c)		and
s. 9 after each of par. (a)(i) and par. (a)		and
s. 21(1) after each of par. (a) to (e)		and

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Division 1 Public Sector Management Act 1994 amended

s. 70

Provision	Delete	Insert
s. 29(1) after each of par. (a) to (g) and (i) to (m)		and
s. 30 after each of par. (a) and (b)		and
s. 32 after par. (a)		and
s. 35(1) after each of par. (a) and (b)		and
s. 36(1) after par. (a)		and
s. 45(1)	Crown	State
s. 45(13) after each of par. (a), (b) and (c)		and
s. 46(2)(a)	Crown	State
s. 51(2)	is valid	is as valid
s. 53(1)	Crown	State
s. 56(2) after par. (a)		and
s. 56(6)	Crown	State
s. 57(1) after par.(a)		and
s. 57(2) def. of <i>Tribunal</i>	means Salaries	means the Salaries

Provision	Delete	Insert
s. 58(7) def. of <i>right of return</i>	means entitlement	means the entitlement
s. 58(7) def. of <i>statutory office</i>	means office,	means an office,
s. 59(5)	Crown.	State.
s. 63(1) after each of par. (a) to (f)		or
s. 64(1)	Crown	State
s. 67 after each of par. (a) to (d)		or
s. 70(7)	Crown	State
s. 86(13) def. of <i>directed person</i>	means person	means a person
s. 86(13) def. of <i>disciplinary inquiry</i>	means disciplinary	means a disciplinary
s. 91	Crown.	State.
s. 93(3) def. of <i>affected department or organisation</i>	means department	means a department
s. 94(2) after each of par. (a) and (b)		and
s. 94(3)	provide for —	provide for the following —

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Part 2 Public Sector administration amendments

Division 2 Other Acts amended

s. 71

Provision	Delete	Insert
s. 94(3) after par. (f)	and	
s. 94(6)	means office,	means an office,
s. 94(6) after par. (a)		and
s. 99(1) after par. (a)		and

1

Division 2 — Other Acts amended

2

71. *Agricultural Practices (Disputes) Act 1995* amended

3

(1) This section amends the *Agricultural Practices (Disputes) Act 1995*.

4

5

(2) In section 19(1) delete “Minister to whom the administration of the *Public Sector Management Act 1994* is committed.” and insert:

6

7

8

Public Sector Commissioner.

9

10

11

(3) In section 19(2) delete “Minister to whom the administration of that Act is committed,” and insert:

12

13

14

Public Sector Commissioner,

15

16

72. *Auditor General Act 2006* amended

17

(1) This section amends the *Auditor General Act 2006*.

18

(2) In section 9(2) delete “sections 21(1)(e) and (g) to (i),” and insert:

19

20

21

sections 21(1)(e), 22C, 22D, 22E,

22

1 **73. *Constitution Acts Amendment Act 1899* amended**

2 (1) This section amends the *Constitution Acts Amendment Act 1899*.

3 (2) In Schedule V Part I Division 2:

4 (a) delete the item relating to the Commissioner for Public
5 Sector Standards;

6 (b) insert in alphabetical order:

7

8 Public Sector Commissioner appointed under the *Public*
9 *Sector Management Act 1994*.

10

11 **74. *Corruption and Crime Commission Act 2003* amended**

12 (1) This section amends the *Corruption and Crime Commission*
13 *Act 2003*.

14 (2) In section 3(1):

15 (a) in the definition of *independent agency* delete
16 paragraph (e) and insert:

17

18 (e) the Public Sector Commissioner;

19

20 (b) after each of paragraphs (a), (b) and (c) insert:

21

22 and

23

24 (3) Delete section 90(6) and insert:

25

26 (6) A report about a person proposed to be appointed as a
27 chief executive officer may be given to —

28 (a) the Public Sector Commissioner; and

- 1 (b) any Minister that the Public Sector
2 Commissioner considers has a relevant interest
3 in the report.
4

5 **75. *Electricity Corporations Act 2005* amended**

- 6 (1) This section amends the *Electricity Corporations Act 2005*.
7 (2) In section 3(1) delete the definition of ***Commissioner for Public***
8 ***Sector Standards***.
9 (3) In the provisions listed in the Table delete “Commissioner for
10 Public Sector Standards” (each occurrence) and insert:

11
12 Public Sector Commissioner
13

14 **Table**

s. 21(1), (5) and (6)	s. 22(1) and (3)
s. 31(2) and (4)	s. 32(1) and (3)
s. 33(2)	

15

16 **76. *Financial Management Act 2006* amended**

- 17 (1) This section amends the *Financial Management Act 2006*.
18 (2) In section 51(3) delete “sections 12 and 13” and insert:

19

20 sections 24I and 24J
21

22 **77. *Gas Pipelines Access (Western Australia) Act 1998* amended**

- 23 (1) This section amends the *Gas Pipelines Access (Western*
24 *Australia) Act 1998*.

- 1 (2) In section 63(11) delete the definition of *Commissioner* and
2 insert:

3

4 *Commissioner* means the Public Sector Commissioner
5 under the *Public Sector Management Act 1994*;

6

7 **78. *Interpretation Act 1984* amended**

- 8 (1) This section amends the *Interpretation Act 1984*.

- 9 (2) In section 5 insert in alphabetical order:

10

11 *Public Sector Commissioner* means the person holding
12 the office established by the *Public Sector*
13 *Management Act 1994* section 16;

14 *public service officer* has the meaning given in the
15 *Public Sector Management Act 1994* section 3(1);

16

17 **79. *Midland Redevelopment Act 1999* amended**

- 18 (1) This section amends the *Midland Redevelopment Act 1999*.

- 19 (2) In section 10 delete “Minister to whom the administration of the
20 PSM Act is for the time being committed by the Governor.” and
21 insert:

22

23 Public Sector Commissioner.

24

25 **80. *Parliamentary Commissioner Act 1971* amended**

- 26 (1) This section amends the *Parliamentary Commissioner Act 1971*.

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Division 2 Other Acts amended

s. 81

- 1 (2) In Schedule 1 delete the item relating to the *Public Sector*
2 *Management Act 1994* and insert:
3

Public Sector Public Sector Commissioner to the extent
Management Act 1994 of the Commissioner's functions other
than that of chief executive officer of the
department of the Public Service
principally assisting in the administration
of the *Public Sector Management*
Act 1994

4

5 **81. *Port Authorities Act 1999* amended**

- 6 (1) This section amends the *Port Authorities Act 1999*.
7 (2) In section 3(1) delete the definition of ***Commissioner for Public***
8 ***Sector Standards***.
9 (3) In the provisions listed in the Table delete "Commissioner for
10 Public Sector Standards" (each occurrence) and insert:
11

12 Public Sector Commissioner
13

14 **Table**

s. 17(1), (4) and (5)	s. 18(1) and (3)
s. 21(1) and (3)	s. 22(1) and (3)
s. 23(2)	

15

16 **82. *Public Interest Disclosure Act 2003* amended**

- 17 (1) This section amends the *Public Interest Disclosure Act 2003*.

1 (2) In section 3(1) delete the definition of *Commissioner* and insert:

2

3 *Commissioner* means the person holding the office of
4 Public Sector Commissioner established by the *Public*
5 *Sector Management Act 1994* section 16;

6

7 (3) Delete the heading to Part 4 and insert:

8

9 **Part 4 — Role of Public Sector Commissioner**

10

11 **83. *Salaries and Allowances Act 1975* amended**

12 (1) This section amends the *Salaries and Allowances Act 1975*.

13 (2) In section 10(4)(b) delete “chief executive officer of the
14 department principally assisting the Minister in the
15 administration of the *Public Sector Management Act 1994*” and
16 insert:

17

18 Public Sector Commissioner

19

20 **84. *State Administrative Tribunal Act 2004* amended**

21 (1) This section amends the *State Administrative Tribunal Act 2004*.

22 (2) In section 121(2) delete “Commissioner for Public Sector
23 Standards” and insert:

24

25 Public Sector Commissioner

26

27 **85. *State Records Act 2000* amended**

28 (1) This section amends the *State Records Act 2000*.

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Part 2 Public Sector administration amendments

Division 2 Other Acts amended

s. 86

1 (2) In section 69(2) delete “sections 12 and 13” and insert:

2

3 sections 24I and 24J

4

5 **86. *Subiaco Redevelopment Act 1994* amended**

6 (1) This section amends the *Subiaco Redevelopment Act 1994*.

7 (2) In section 3 delete the definition of **Public Service Act**.

8 (3) In section 10 delete “Minister to whom the administration of the
9 Public Service Act is for the time being committed by the
10 Governor.” and insert:

11

12 Public Sector Commissioner.

13

14 (4) In section 14(1) delete “Public Service Act” and insert:

15

16 *Public Sector Management Act 1994*

17

18 (5) In section 15(1) delete “Minister to whom the administration of
19 the Public Service Act is for the time being committed by the
20 Governor,” and insert:

21

22 Public Sector Commissioner

23

24 (6) In section 17 delete “Public Service Act” and insert:

25

26 *Public Sector Management Act 1994*

27

28 **87. *Water Corporation Act 1995* amended**

29 (1) This section amends the *Water Corporation Act 1995*.

1 (2) In section 3(1) delete the definition of *Commissioner for Public*
2 *Sector Standards*.

3 (3) In the provisions listed in the Table delete “Commissioner for
4 Public Sector Standards” (each occurrence) and insert:

5

6 Public Sector Commissioner

7

8

Table

s. 16(1), (5) and (6)	s. 17(1) and (3)
s. 24(1) and (3)	s. 25(1) and (3)
s. 26(2)	

9

10 **88. *Western Australian Land Authority Act 1992* amended**

11 (1) This section amends the *Western Australian Land Authority*
12 *Act 1992*.

13 (2) In section 4(1) delete the definition of *Commissioner for Public*
14 *Sector Standards*.

15 (3) In the provisions listed in the Table delete “Commissioner for
16 Public Sector Standards” (each occurrence) and insert:

17

18 Public Sector Commissioner

19

20

Table

s. 12(1), (4) and (5)	s. 13(1) and (3)
s. 14B(1) and (3)	s. 14C(1) and (3)
s. 14D(2)	

21

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Division 2 Other Acts amended

s. 89

1 **89. Various references to “Minister for Public Sector**
2 **Management” amended**

3 (1) This section amends the Acts listed in the Table.

4 (2) In the provisions listed in the Table delete “Minister for Public
5 Sector Management” and insert:

6
7 Public Sector Commissioner
8

9 **Table**

<i>Agricultural Produce Commission Act 1988</i>	Sch. cl. 2
<i>Agriculture Protection Board Act 1950</i>	s. 8(1)(m)
<i>Animal Resources Authority Act 1981</i>	s. 7, 12(2) and (4)
<i>Architects Act 2004</i>	s. 9
<i>Armada Redevelopment Act 2001</i>	s. 10
<i>Biosecurity and Agriculture Management Act 2007</i>	s. 48(4)
<i>Botanic Gardens and Parks Authority Act 1998</i>	s. 8
<i>Builders’ Registration Act 1939</i>	s. 6(4), 30(1)
<i>Building and Construction Industry Training Fund and Levy Collection Act 1990</i>	Sch. 1 cl. 2

<i>Caravan Parks and Camping Grounds Act 1995</i>	Sch. 1 cl. 7(1)
<i>Carers Recognition Act 2004</i>	s. 17
<i>Cemeteries Act 1986</i>	s. 9
<i>Chemistry Centre (WA) Act 2007</i>	s. 8(1) and (2)
<i>Chicken Meat Industry Act 1977</i>	s. 9
<i>Child Care Services Act 2007</i>	s. 41(8)
<i>Children and Community Services Act 2004</i>	s. 27(8), 92(7)(b)
<i>Chiropractors Act 2005</i>	s. 9
<i>Coal Industry Tribunal of Western Australia Act 1992</i>	s. 27
<i>Commissioner for Children and Young People Act 2006</i>	s. 56
<i>Conservation and Land Management Act 1984</i>	s. 20(4)(b), 30
<i>Construction Industry Portable Paid Long Service Leave Act 1985</i>	s. 9(1)
<i>Contaminated Sites Act 2003</i>	s. 33(5)
<i>Country Housing Act 1998</i>	s. 6
<i>Criminal Injuries Compensation Act 2003</i>	Sch. 1 cl. 3(4)

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<i>Curriculum Council Act 1997</i>	s. 8
<i>Dental Prosthetists Act 1985</i>	s. 9
<i>Disability Services Act 1993</i>	Sch. 3 cl. 4, Sch. 5 cl. 4
<i>East Perth Redevelopment Act 1991</i>	s. 10, 14(1)(b), 15(2)
<i>Economic Regulation Authority Act 2003</i>	s. 12(1)
<i>Edith Cowan University Act 1984</i>	s. 31(2)
<i>Electricity Industry Act 2004</i>	s. 81(3)
<i>Energy Coordination Act 1994</i>	s. 11ZPO(3), 25(4)
<i>Environmental Protection Act 1986</i>	s. 9, 22(2), 25(3), 29(4), 40(8), 108(2), Sch. 7 cl. 2(1)(a) and 5
<i>Equal Opportunity Act 1984</i>	s. 75(5), 78(3)(a), 142(4)
<i>Fire and Emergency Services Authority of Western Australia Act 1998</i>	s. 10, 28
<i>Fish Resources Management Act 1994</i>	s. 245(1)
<i>Fisheries Adjustment Schemes Act 1987</i>	s. 13
<i>Food Act 2008</i>	s. 124(2)(c)
<i>Forest Products Act 2000</i>	s. 8(1) and (2), 66(7) and (8)

<i>Gaming and Wagering Commission Act 1987</i>	s. 13(1), 109D(8)
<i>Gender Reassignment Act 2000</i>	s. 9(1)
<i>Grain Marketing Act 2002</i>	s. 9
<i>Guardianship and Administration Act 1990</i>	s. 91(3), 93(3)(a)
<i>Health Legislation Administration Act 1984</i>	s. 6(3), 11(3)
<i>Health Services (Conciliation and Review) Act 1995</i>	Sch. 2 cl. 2(a), 6
<i>Heritage of Western Australia Act 1990</i>	s. 10(2), 27(2), 28(1)
<i>Higher Education Act 2004</i>	s. 21(3)
<i>Hospitals and Health Services Act 1927</i>	s. 7E(4)
<i>Housing Act 1980</i>	s. 18(1)
<i>Human Reproductive Technology Act 1991</i>	Sch. cl. 4(1)
<i>Industry and Technology Development Act 1998</i>	s. 24
<i>Insurance Commission of Western Australia Act 1986</i>	s. 5(5), 11(5)
<i>Land Administration Act 1997</i>	s. 97(9)

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<i>Land Information Authority Act 2006</i>	s. 23
<i>Law Reform Commission Act 1972</i>	s. 9(2)
<i>Legal Aid Commission Act 1976</i>	s. 20(1), 21(1)
<i>Legal Profession Act 2008</i>	s. 317, 564
<i>Liquor Control Act 1988</i>	s. 9H(1)
<i>Litter Act 1979</i>	s. 15(3)
<i>Local Government Act 1995</i>	Sch. 2.5 cl. 8(1), Sch. 5.1 cl. 9(1)
<i>Local Government Grants Act 1978</i>	s. 7(2)
<i>Lotteries Commission Act 1990</i>	s. 9(2), Sch. 1 cl. 3
<i>Main Roads Act 1930</i>	First Sch. cl. 5
<i>Marketing of Potatoes Act 1946</i>	s. 18(2)
<i>Medical Practitioners Act 2008</i>	s. 10
<i>Medical Radiation Technologists Act 2006</i>	s. 8
<i>Mental Health Act 1996</i>	s. 180(1), Sch. 1 cl. 2(2)
<i>Minerals and Energy Research Act 1987</i>	s. 16, 25, 31(3)
<i>Mines Safety and Inspection Act 1994</i>	s. 19(3), 20(3), 48(3), 82(5)

<i>Mining Act 1978</i>	s. 13(4)
<i>Nurses and Midwives Act 2006</i>	s. 9
<i>Occupational Safety and Health Act 1984</i>	s. 8(2), 9(3), 14A(6), 15(4)
<i>Occupational Therapists Act 2005</i>	s. 9
<i>Optometrists Act 2005</i>	s. 9
<i>Osteopaths Act 2005</i>	s. 9
<i>Owner-Drivers (Contracts and Disputes) Act 2007</i>	s. 24
<i>Painters' Registration Act 1961</i>	s. 8
<i>Parks and Reserves Act 1895</i>	s. 15(2)(a)
<i>Pearling Act 1990</i>	s. 41
<i>Perth Market Act 1926</i>	s. 8
<i>Physiotherapists Act 2005</i>	s. 9
<i>Planning and Development Act 2005</i>	s. 13
<i>Podiatrists Act 2005</i>	s. 9
<i>Port Authorities Act 1999</i>	s. 7(2)
<i>Port Kennedy Development Agreement Act 1992</i>	s. 17
<i>Prisons Act 1981</i>	s. 6(5), 13(1)

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<i>Professional Combat Sports Act 1987</i>	s. 6(1)
<i>Professional Standards Act 1997</i>	Sch. 1 cl. 4(1) and (2)
<i>Psychologists Act 2005</i>	s. 8
<i>Public Works Act 1902</i>	s. 9D
<i>Racing Penalties (Appeals) Act 1990</i>	Sch. cl. 1(3), 2
<i>Radiation Safety Act 1975</i>	s. 20
<i>Real Estate and Business Agents Act 1978</i>	s. 11, 23A(9), 131KA
<i>Regional Development Commissions Act 1993</i>	s. 19(1) and (2)(a), 29(2)
<i>Retail Trading Hours Act 1987</i>	s. 17(5)
<i>Rights in Water and Irrigation Act 1914</i>	s. 26GR
<i>Road Safety Council Act 2002</i>	s. 10
<i>Rottnest Island Authority Act 1987</i>	s. 8
<i>Royalties for Regions Act 2009</i>	s. 20
<i>Rural Business Development Corporation Act 2000</i>	s. 14
<i>School Education Act 1999</i>	s. 39(9)(b), 87(7)(b), 93(9)(b), 241(7)(b)

<i>Sentence Administration Act 2003</i>	Sch. 1 cl. 6(1)
<i>Settlement Agents Act 1981</i>	s. 11
<i>Small Business Development Corporation Act 1983</i>	s. 7(1)
<i>Soil and Land Conservation Act 1945</i>	s. 41(3)
<i>State Administrative Tribunal Act 2004</i>	s. 119(5)
<i>State Records Act 2000</i>	Sch. 4 cl. 7
<i>State Superannuation Act 2000</i>	s. 68(2), Sch. 1 cl. 7
<i>Swan and Canning Rivers Management Act 2006</i>	s. 21(2), 78(2)
<i>Swan Valley Planning Act 1995</i>	s. 19
<i>Taxi Act 1994</i>	s. 12
<i>Tobacco Products Control Act 2006</i>	s. 63
<i>Transport Co-ordination Act 1966</i>	s. 7B(9)
<i>Vocational Education and Training Act 1996</i>	s. 63
<i>Waste Avoidance and Resource Recovery Act 2007</i>	s. 15

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Division 2 Other Acts amended

s. 90

<i>Water Agencies (Powers) Act 1984</i>	s. 21, 109(2)
<i>Water Boards Act 1904</i>	s. 29(1)
<i>Western Australian College of Teaching Act 2004</i>	s. 11(1)
<i>Western Australian Land Authority Act 1992</i>	s. 8(1)
<i>Western Australian Sports Centre Trust Act 1986</i>	s. 7, 11(2)
<i>Western Australian Tourism Commission Act 1983</i>	s. 7(1), 17(3a), (4) and (5)
<i>Western Australian Treasury Corporation Act 1986</i>	s. 5D
<i>Workers' Compensation and Injury Management Act 1981</i>	s. 99(2), 100A(4)
<i>Zoological Parks Authority Act 2001</i>	s. 8, 25(3), Sch. 3 cl. 6, 9

1

2 **90. Various references to “Public Service Board” amended**

3 (1) This section amends the Acts listed in the Table.

4 (2) In the provisions listed in the Table delete “Public Service
5 Board” and insert:

6

7 Public Sector Commissioner

8

1

Table

<i>Alcohol and Drug Authority Act 1974</i>	s. 21(2)
<i>Companies (Administration) Act 1982</i>	s. 4(6)
<i>Country High School Hostels Authority Act 1960</i>	s. 10(2)
<i>Perth Theatre Trust Act 1979</i>	s. 9(1), 17(3)

2

1 **Part 3 — Public Sector discipline amendments**

2 **Division 1 — *Public Sector Management Act 1994* amended**

3 **91. Act amended**

4 This Division amends the *Public Sector Management Act 1994*.

5 **92. Section 3 amended**

6 (1) In section 3(1) delete the definitions of:

7 *respondent*

8 *special disciplinary inquiry*

9 (2) In section 3(1) insert in alphabetical order:

10

11 *disciplinary action* has the meaning given in
12 section 80A;

13 *special disciplinary inquiry* means a special
14 disciplinary inquiry held under section 87;

15

16 **93. Section 22A amended**

17 After section 22A(1) insert:

18

19 (2A) The Commissioner must issue instructions to ensure
20 that, if a decision is made under section 81(1)(a) in
21 respect of an employee, the employee is —

22 (a) notified in writing of the possible breach of
23 discipline; and

24 (b) given a reasonable opportunity to respond.

25

1 **94. Section 76 amended**

2 (1) In section 76(1) delete “subsection (3),” and insert:

3

4 subsections (3) and (4),

5

6 (2) After section 76(3) insert:

7

8 (4) A former employee who —

9 (a) may have committed a breach of discipline; and

10 (b) was an employee to whom this Part applied at
11 the time of the suspected breach,

12 is, in circumstances specified in the Commissioner’s
13 instructions, to be taken to be an employee for the
14 purposes of this Part even though the person has ceased
15 to be employed in the Public Sector by or under an
16 employing authority.

17 (5) The Commissioner’s instructions may specify the
18 disciplinary action that may be taken under this Act in
19 respect of a former employee who is found to have
20 committed a breach of discipline, and the provisions of
21 this Part apply to and in relation to the disciplinary
22 action as if the former employee were an employee.

23 (6) The taking of disciplinary action with respect to a
24 former employee does not affect the former employee’s
25 retirement or resignation or the benefits, rights and
26 liabilities arising from the retirement or resignation.

27 (7) For the purposes of this Part, in circumstances
28 specified in the Commissioner’s instructions, a former
29 employing authority of an employee is to be taken to
30 be the employing authority of the employee.

- 1 (8) Nothing in this Part limits the power of an employing
2 authority under other provisions of this Act to take
3 improvement action in relation to an employee in
4 circumstances in which the employing authority
5 considers it appropriate to do so.
6

7 **95. Section 78 amended**

- 8 (1) In section 78(1):
9 (a) delete “section 52, an employee who —” and insert:
10 section 52, an employee or former employee who —
11
12 (b) in paragraph (a) delete “is” and insert:
13 is, or was,
14
15 (c) delete paragraph (b) and insert:
16
17 (b) is aggrieved by —
18 (ia) a decision made in respect of the
19 Government officer under
20 section 79(3)(b) or (c) or (4); or
21
22 (i) a finding made in respect of the
23 Government officer in the exercise of a
24 power under section 87(3)(a)(ii); or
25
26 (ii) a decision made under section 82 to
27 suspend the Government officer on
28 partial pay or without pay; or
29 (iii) a decision to take disciplinary action
30 made in respect of the Government
31 officer under section 82A(3)(b), 88(b)
32 or 92(1),
33

- 1 (d) delete “that decision” and insert:
2
3 that decision or finding
4
- 5 (2) In section 78(2):
6 (a) delete “subsection (3), an employee who —” and insert:
7
8 subsection (3), an employee or former employee who —
9
- 10 (b) delete paragraph (b) and insert:
11
12 (b) is aggrieved by —
13 (ia) a decision made in respect of the
14 employee under section 79(3)(b) or (c)
15 or (4); or
16 (i) a finding made in the exercise of a
17 power under section 87(3)(a)(ii); or
18 (ii) a decision made under section 82 to
19 suspend the employee on partial pay or
20 without pay; or
21 (iii) a decision to take disciplinary action
22 made under section 82A(3)(b), 88(b) or
23 92(1),
24
- 25 (c) delete “the decision” and insert:
26
27 the decision or finding
28
- 29 (d) delete “that decision” (each occurrence) and insert:
30
31 that decision or finding
32

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Part 3 Public Sector discipline amendments

Division 1 Public Sector Management Act 1994 amended

s. 95

- 1 (3) In section 78(3):
- 2 (a) delete “section 52, an employee —” and insert:
- 3
- 4 section 52, an employee or former employee —
- 5
- 6 (b) delete paragraph (b) and insert:
- 7
- 8 (b) who is aggrieved by —
- 9 (i) a decision made under section 82 to
- 10 suspend the employee on partial pay or
- 11 without pay; or
- 12 (ii) a finding made in respect of the person
- 13 referred to in section 82A(3)(a),
- 14 87(3)(a)(i) or 88(a),
- 15
- 16 (c) delete “the decision” and insert:
- 17
- 18 the decision or finding
- 19
- 20 (d) delete “that decision” (each occurrence) and insert:
- 21
- 22 that decision or finding
- 23
- 24 (4) In section 78(4) delete “decision” (each occurrence) and insert:
- 25
- 26 direction
- 27
- 28 (5) After section 78(4) insert:
- 29
- 30 (5) If it appears to the Industrial Commission or the Public
- 31 Service Appeal Board that the employing authority
- 32 failed to comply with a Commissioner’s instruction or
- 33 the rules of procedural fairness in making the decision

- 1 or finding the subject of a referral or appealed against,
2 the Industrial Commission or Public Service Appeal
3 Board —
- 4 (a) is not required to determine the reference or
5 allow the appeal solely on that basis and may
6 proceed to decide the reference or appeal on its
7 merits; or
- 8 (b) may quash the decision or finding and remit the
9 matter back to the employing authority with
10 directions as to the stage at which the
11 disciplinary process in relation to the matter is
12 to be recommenced by the employing authority
13 if the employing authority continues the
14 disciplinary process.
15

16 **96. Section 80A inserted**

17 At the beginning of Part 5 Division 3 insert:

18
19 **80A. Terms used**

20 In this Division —

21 ***disciplinary action***, in relation to a breach of discipline
22 by an employee, means any one or more of the
23 following —

- 24 (a) a reprimand;
- 25 (b) the imposition of a fine not exceeding an
26 amount equal to the amount of remuneration
27 received by the employee in respect of the last
28 5 days during which the employee was at work
29 as an employee before the day on which the
30 finding of the breach of discipline was made;
- 31 (c) transferring the employee to another public
32 sector body with the consent of the employing
33 authority of that public sector body;

- 1 (d) if the employee is not a chief executive officer
2 or chief employee, transferring the employee to
3 another office, post or position in the public
4 sector body in which the employee is
5 employed;
- 6 (e) reduction in the monetary remuneration of the
7 employee;
- 8 (f) reduction in the level of classification of the
9 employee;
- 10 (g) dismissal;
- 11 **section 94 breach of discipline** means a breach of
12 discipline arising out of disobedience to, or disregard
13 of, a lawful order referred to in section 94(4);
- 14 **serious offence** means —
- 15 (a) an indictable offence against a law of the State
16 (whether or not the offence is or may be dealt
17 with summarily), another State or a Territory of
18 the Commonwealth or the Commonwealth; or
- 19 (b) an offence against the law of another State or a
20 Territory of the Commonwealth that would be
21 an indictable offence against a law of this State
22 if committed in this State (whether or not the
23 offence could be dealt with summarily if
24 committed in this jurisdiction); or
- 25 (c) an offence against the law of a foreign country
26 that would be an indictable offence against a
27 law of the Commonwealth or this State if
28 committed in this State (whether or not the
29 offence could be dealt with summarily if
30 committed in this jurisdiction); or
- 31 (d) an offence, or an offence of a class, prescribed
32 under section 108.
33

1 **97. Section 81 replaced**

2 Delete section 81 and insert:

3

4 **81. Employing authority to decide how to deal with**
5 **suspected breach of discipline**

- 6 (1) If an employing authority of an employee is made
7 aware, or becomes aware, by any means that the
8 employee may have committed a breach of discipline,
9 the employing authority may —
- 10 (a) decide to deal with the matter as a disciplinary
11 matter under this Division in accordance with
12 the Commissioner's instructions; or
- 13 (b) decide that it is appropriate —
- 14 (i) to take improvement action with respect
15 to the employee; or
- 16 (ii) to take no action.
- 17 (2) If the Minister, in his or her capacity as employing
18 authority of a ministerial officer, decides to act under
19 subsection (1)(a), the Minister must direct another
20 person to submit to the Minister a report as to whether
21 there has been a breach of discipline and a
22 recommendation as to any decision to be made under
23 section 82A(3).
- 24 (3) A direction must not be given under subsection (2) to
25 the Commissioner.
- 26 (4) A person directed under subsection (2) —
- 27 (a) must comply with the direction of the Minister;
28 and
- 29 (b) for that purpose, has the functions of an
30 employing authority under section 82A(1) and
31 under the Commissioner's instructions.

- 1 **82A. Dealing with disciplinary matter**
- 2 (1) In dealing with a disciplinary matter under this
- 3 Division an employing authority —
- 4 (a) must proceed with as little formality and
- 5 technicality as this Division, the
- 6 Commissioner’s instructions and the
- 7 circumstances of the matter permit; and
- 8 (b) is not bound by the rules of evidence; and
- 9 (c) may, subject to this Division and the
- 10 Commissioner’s instructions, determine the
- 11 procedure to be followed.
- 12 (2) Even though an employing authority decides to act
- 13 under section 81(1)(a), the employing authority may, at
- 14 any stage of the process, decide instead that it is
- 15 appropriate —
- 16 (a) to take improvement action with respect to the
- 17 employee; or
- 18 (b) that no further action be taken.
- 19 (3) Subject to subsection (4) and section 89, after dealing
- 20 with a matter as a disciplinary matter under this
- 21 Division —
- 22 (a) if the employing authority finds that the
- 23 employee has committed a section 94 breach of
- 24 discipline, the employing authority must take
- 25 disciplinary action by dismissing the employee;
- 26 and
- 27 (b) if the employing authority finds that the
- 28 employee has committed a breach of discipline
- 29 that is not a section 94 breach of discipline, the
- 30 employing authority must decide —
- 31 (i) to take disciplinary action, or both
- 32 disciplinary action and improvement
- 33 action, with respect to the employee; or

- 1 (ii) to take improvement action with respect
2 to the employee; or
3 (iii) that no further action is to be taken.
- 4 (4) The Minister —
5 (a) is bound by any finding in a report submitted as
6 directed under section 81(2); and
7 (b) must, when making a decision under
8 subsection (3)(b), have regard to, but is not
9 bound by, a recommendation submitted as
10 directed under section 81(2).
11

12 **98. Section 82 replaced**

13 Delete section 82 and insert:
14

15 **82. Suspension pending decision in relation to breach of**
16 **discipline or criminal charge**

- 17 (1) If —
18 (a) an employing authority has decided to act under
19 section 81(1)(a) in relation to an employee; or
20 (b) an employee is charged with having committed
21 a serious offence,
22 the employing authority may, in accordance with the
23 Commissioner's instructions, suspend the employee on
24 full pay, partial pay or without pay.
- 25 (2) Subject to subsection (3) —
26 (a) a suspension arising from a decision referred to
27 in subsection (1)(a) has effect until a decision is
28 made under section 82A(2) or (3) or 88 in
29 respect of the suspected breach; or
30 (b) a suspension arising from a charge referred to
31 in subsection (1)(b) has effect until the criminal

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Division 1 Public Sector Management Act 1994 amended

s. 99

- 1 charge or any action that the employing
2 authority is considering taking under section 92
3 has been finalised.
- 4 (3) The employing authority may at any time remove, or
5 vary the terms of, the suspension.
- 6 (4) Unless the employing authority otherwise directs, any
7 pay withheld under subsection (1) is forfeited to the
8 State if —
- 9 (a) it is decided to take disciplinary action with
10 respect to the employee for the breach of
11 discipline; or
- 12 (b) the employee is convicted or found guilty of the
13 offence concerned or another serious offence.
- 14 (5) An employee is entitled to have any pay of the
15 employee that is withheld under subsection (1) and not
16 forfeited under subsection (4) restored to the employee.
17

18 **99. Sections 83, 84, 85 and 86 deleted**

19 Delete sections 83, 84, 85 and 86.

20 **100. Section 87 amended**

- 21 (1) Before section 87(1) insert:
22
- 23 (1A) The Commissioner may at any time before a decision is
24 made under section 81(1)(b) or 82A(2) or (3) in respect
25 of a suspected breach of discipline direct that —
- 26 (a) a special disciplinary inquiry be held into the
27 suspected breach; or
- 28 (b) an investigation by the employing authority or a
29 person directed under section 81(2) into the
30 suspected breach be continued as a special
31 disciplinary inquiry.

- 1 (1B) A direction under subsection (1A) may be made on the
2 request of the employing authority of the employee
3 suspected to have committed the breach of discipline or
4 on the initiative of the Commissioner.
5
- 6 (2) Delete section 87(3) and insert:
7
- 8 (3) A person who holds a special disciplinary inquiry must,
9 at the conclusion of the inquiry —
- 10 (a) make a finding that the employee —
- 11 (i) has committed a section 94 breach of
12 discipline; or
- 13 (ii) has committed a breach of discipline
14 other than a breach referred to in
15 subparagraph (i); or
- 16 (iii) has not committed a breach of
17 discipline;
- 18 and
- 19 (b) prepare a report on the conduct and finding, of
20 the special disciplinary inquiry; and
- 21 (c) if the finding is that the employee has
22 committed a breach of discipline other than a
23 section 94 breach of discipline, include in the
24 report a recommendation as to any disciplinary
25 action and improvement action that should be
26 taken by the employing authority; and
- 27 (d) provide the employing authority and the
28 Commissioner with a copy of the report.
29

1 **101. Section 88 replaced**

2 Delete section 88 and insert:

3

4 **88. Action on receipt of report of special disciplinary**
5 **inquiry**

6 On receiving a report under section 87(3), the
7 employing authority must, subject to section 89, accept
8 the finding in the report and —

- 9 (a) in the case of a finding that the employee has
10 committed a section 94 breach of discipline,
11 take disciplinary action by dismissing the
12 employee; or
- 13 (b) in the case of a finding that the employee has
14 committed a breach of discipline other than a
15 breach referred to in paragraph (a) —
- 16 (i) decide to take disciplinary action or
17 improvement action, or both
18 disciplinary action and improvement
19 action in relation to the employee in
20 accordance with the recommendation in
21 the report; or
- 22 (ii) decline to accept the recommendation in
23 the report and decide to take such other
24 disciplinary action or improvement
25 action, or both disciplinary action and
26 improvement action, in relation to the
27 employee as could have been
28 recommended in the report;
- 29 or
- 30 (c) in the case of a finding that no breach of
31 discipline was committed by the employee,
32 notify the employee of that finding and that no
33 further action will be taken in the matter.
- 34

1 **102. Section 89 replaced**

2 Delete section 89 and insert:

3

4 **89. Dismissal of chief executive officer on disciplinary**
5 **grounds**

6 (1) If a chief executive officer is the subject of a finding
7 under section 82A(3)(a) or a finding under
8 section 87(3)(a)(i) in respect of a section 94 breach of
9 discipline, the Commissioner must recommend to the
10 Governor that the chief executive officer be dismissed,
11 and the Governor must dismiss the chief executive
12 officer.

13 (2) If a chief executive officer —

14 (a) is the subject of a finding under
15 section 82A(3)(b) or a finding under
16 section 87(3)(a)(ii) in respect of a breach of
17 discipline other than a section 94 breach of
18 discipline; and

19 (b) the Commissioner considers that the chief
20 executive officer ought to be dismissed,

21 the Commissioner must recommend to the Governor
22 that the chief executive officer be dismissed, and the
23 Governor must dismiss the chief executive officer.

24

25 **103. Section 90 amended**

26 In section 90:

27 (a) delete “a respondent” and insert:

28

29 an employee

30

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Division 1 Public Sector Management Act 1994 amended

s. 104

- 1 (b) delete “notify the respondent —” and insert:
2
3 notify the employee —
4
5 (c) in paragraph (a) delete “the respondent” and insert:
6
7 the employee
8
9 (d) in paragraph (b) delete “the respondent,” (each
10 occurrence) and insert:
11
12 the employee,
13
14 (e) delete “within the prescribed period after the making of
15 that finding or the taking of that action, as the case
16 requires.” and insert:
17
18 within the period prescribed in the Commissioner’s
19 instructions.
20

21 Note: The heading to amended section 90 is to read:

22 **Employing authority to notify employee of outcome of**
23 **disciplinary matter**

24 **104. Section 91 amended**

25 In section 91:

- 26 (a) delete “a respondent” and insert:
27
28 an employee
29
30 (b) delete “Division, the respondent” and insert:
31
32 Division, the employee
33

1 (c) delete “the respondent does” and insert:

2

3 the employee does

4

5 **105. Section 92 replaced**

6 Delete section 92 and insert:

7

8 **92. Action if employee convicted of serious offence**

9 (1) Despite the *Sentencing Act 1995* section 11, if an
10 employee is convicted or found guilty of a serious
11 offence, the employing authority may take disciplinary
12 action or improvement action, or both disciplinary
13 action and improvement action, with respect to the
14 employee.

15 (2) Before any disciplinary action or improvement action
16 is taken with respect to an employee under this section,
17 the employee must be given an opportunity to make a
18 submission in relation to the action that the employing
19 authority is considering taking.

20 (3) If an employee is dismissed under this section, for the
21 purposes of sections 58(4) and 59(1) the employee is
22 taken to have been dismissed for breach of discipline.

23 **93A. Implementation of decisions under this Division**

24 A decision of an employing authority to take
25 disciplinary action or improvement action with respect
26 to an employee may be carried into effect at any time.

27

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Division 1 Public Sector Management Act 1994 amended

s. 106

1 **106. Section 94 amended**

2 In section 94(2)(d) delete “section 86(3)(a) or (9)(b)(i),
3 88(1)(b)(i) or 89(1).” and insert:

4

5 section 82A(3)(a), 88(a) or 89(1).

6

7 **107. Part 9 Division 3 inserted**

8 Before Schedule 1 insert:

9

10 **Division 3 — *Public Sector Reform Act 2009* Part 3**
11 **amendments: transitional provisions**

12 **114. Transitional provisions**

13 Schedule 8 sets out transitional provisions.

14

15 **108. Schedule 8 inserted**

16 At the end of the Act insert:

17

18 **Schedule 8 — *Public Sector Reform Act 2009* Part 3**
19 **amendments: transitional provisions**

20

[s. 114]

21 **1. Term used: commencement day**

22 In this Schedule —

23 ***commencement day*** means the day on which the *Public*
24 *Sector Reform Act 2009* section 97 comes into operation.

25 **2. Disciplinary proceedings**

26 (1) If a proceeding (including an investigation, disciplinary
27 inquiry or special disciplinary inquiry) commenced under

1 Part 5 Division 3 before the commencement day has not
2 been finalised under that Division before that day, Part 5
3 Division 3 as in force immediately before that day continues
4 to apply to and in relation to that proceeding as if the *Public*
5 *Sector Reform Act 2009* Part 3 had not been enacted until
6 the proceeding is finalised.

7 (2) Section 78 as in force immediately before the
8 commencement day continues to apply to a decision made
9 in a proceeding referred to in subclause (1).

10 (3) Except as provided in subclauses (1) and (2), Part 5 as
11 amended by the *Public Sector Reform Act 2009* Part 3
12 applies in relation to any act, omission or conduct that
13 occurred before or after the commencement day.

14 **3. Suspensions**

15 (1) A suspension that is of effect under section 82 immediately
16 before the commencement day continues to be of effect for
17 the remainder of the period for which it would, but for the
18 *Public Sector Reform Act 2009* Part 3, have been of effect.

19 (2) Section 82 as in force immediately before the
20 commencement day continues to apply to a suspension
21 referred to in subclause (1).

22 **4. Appeals**

23 An appeal pending under section 78 immediately before the
24 commencement day is to be dealt with under that section as
25 in force before the commencement day.

26 **5. Power to amend subsidiary legislation**

27 (1) The Governor, on the recommendation of the Minister, may
28 make regulations amending subsidiary legislation made
29 under any Act.

30 (2) The Minister may make a recommendation under
31 subclause (1) only if the Minister considers that each
32 amendment proposed to be made by the regulations is
33 necessary or desirable as a consequence of the enactment of
34 the *Public Sector Reform Act 2009* Part 3.

- 1 (3) Nothing in this clause prevents subsidiary legislation from
2 being amended in accordance with the Act under which it
3 was made.
- 4 **6. Transitional regulations**
- 5 (1) If there is no sufficient provision in this Schedule for
6 dealing with a transitional matter, the regulations may
7 prescribe all matters that are required or necessary or
8 convenient to be prescribed for dealing with the matter.
- 9 (2) In subclause (1) —
- 10 *transitional matter* means a matter that needs to be dealt
11 with for the purpose of effecting the transition from an Act
12 (including this Act) as enacted immediately before the
13 commencement day to the Act as amended by the *Public*
14 *Sector Reform Act 2009* Part 3.
- 15 (3) Regulations made under subclause (1) may provide that
16 specified provisions of this Act as in force on or after the
17 commencement of the *Public Sector Reform Act 2009*, or of
18 subsidiary legislation made under this Act, or of an Act
19 amended by the *Public Sector Reform Act 2009* —
- 20 (a) do not apply; or
21 (b) apply with specified modifications,
- 22 to or in relation to any matter.
- 23 (4) If regulations under subclause (1) provide that a specified
24 state of affairs is to be taken to have existed, or not to have
25 existed, on and from a day that is earlier than the day on
26 which the regulations are published in the *Gazette* but not
27 earlier than the commencement day, the regulations have
28 effect according to their terms.
- 29 (5) In subclauses (3) and (4) —
- 30 *specified* means specified or described in the regulations.
- 31 (6) If regulations contain a provision referred to in
32 subclause (4), the provision does not operate so as to —
- 33 (a) affect in a manner prejudicial to any person (other
34 than the State or an authority of the State), the rights

- 1 of that person existing before the day of publication
2 of those regulations; or
3 (b) impose liabilities on any person (other than the
4 State or an authority of the State) in respect of
5 anything done or omitted to be done before the day
6 of publication of those regulations.

7 **7. Interpretation Act 1984 not affected**

8 Unless the contrary intention appears in this Schedule, the
9 provisions of this Schedule are additional to and do not
10 prejudice or affect the application of the *Interpretation*
11 *Act 1984* Part V.
12

13 **Division 2 — Other Acts amended**

14 **109. Industrial Relations Act 1979 amended**

15 (1) This section amends the *Industrial Relations Act 1979*.

16 (2) In section 80I(1):

17 (a) in paragraph (b) after “decision” insert:

18

19 or finding

20

21 (b) in paragraph (d) after “decision” insert:

22

23 or finding

24

25 **110. School Education Act 1999 amended**

26 (1) This section amends the *School Education Act 1999*.

27 (2) In section 239(1)(b) delete “that is not the Minister (within the
28 meaning in that Part)”.

Public Sector Reform Bill 2009

Part 3 Public Sector discipline amendments

Division 2 Other Acts amended

s. 110

1 (3) Delete section 239(2) and insert:

2

3 (2) In addition to —

4 (a) the actions that may be taken under
5 section 79(3) of the PSMA; and

6 (b) any disciplinary action or improvement action
7 that may be taken under section 82A(3)(b) or
8 88(b) of the PSMA,

9 the chief executive officer may under those provisions
10 make a determination under section 238(1)(a) in
11 respect of a member of the teaching staff.
12

13 (4) In section 240(1):

14 (a) in paragraph (a) delete “is guilty of an act or omission
15 that comes within” and insert:

16

17 may have committed a breach of discipline as referred to
18 in
19

20 (b) delete paragraph (c)(ii) and “or” after it and insert:

21

22 (ii) in the case of a suspected breach of
23 discipline dealt with under Part 5 of the
24 PSMA — a decision is made under
25 section 81(1)(b), 82A(2) or (3) or 88 of
26 the PSMA; or
27

28

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