

**Public Sector Reform Bill 2009  
Explanatory Memorandum**

**OUTLINE**

The principal purposes of this Bill are to amend the *Public Sector Management Act 1994* .as follows:

- a) to create a new, independent statutory office of Public Sector Commissioner, having overall responsibility for matters of efficiency and effectiveness in the public sector and for the maintenance of minimum standards of behaviour and integrity of public sector employing authorities and employees;
- b) to streamline and simplify the disciplinary process for public sector employees; and
- c) to address a range of administrative inefficiencies and anomalies in the operation of the Act.

**PART 1 – PRELIMINARY**

**Clause 1      Short title**  
Cites the title of this Act.

**Clause 2      Commencement**  
Provides for Part 1 of the Act to come into operation the day the Act receives Royal Assent, and for the rest of the Act on such day or days as is or are fixed by proclamation.

In particular, it is intended there be some flexibility for the discipline amendments in Part 3 to come into operation later than the administrative amendments in Parts 1 and 2. Some provisions are therefore amended twice, with the discipline amendments intended to override the administration amendment (for example s.3 definition of *respondent* is amended in Part 2 and deleted in Part 3).

**PART 2 – PUBLIC SECTOR ADMINISTRATION AMENDMENTS**

*Division 1 – Public Sector Management Act 1994 amended*

**Clause 3      Act amended**  
Specifies the amendments in this Act are to the *Public Sector Management Act 1994*.

**Clause 4      Section 3 amended**  
Deletes, replaces and inserts new definitions in light of the new role of the Public Sector Commissioner and processes that may be linked to the new disciplinary arrangements.

- Clause 5**      **Section 4 amended**  
Amends section 4(1) to designate the Public Sector Commissioner as the deemed CEO of the department known as the office of the Public Sector Commissioner.
- Clause 6**      **Section 5 amended**  
The former section 5(1)(a) of the Act provided that the employing authority of a chief executive officer was the Minister. Those functions are now conferred upon the statutory office holder of the Public Sector Commissioner.
- Clause 7**      **Part 2 heading replaced**  
Replaces Part 2 heading of the former Act with “Part 2 – Public Sector principles”.
- Clause 8**      **Part 2 Division 1 heading deleted**  
Deletes the heading to Part 1 Division 1.
- Clause 9**      **Section 8 amended**  
Inserts an explanation as to the meaning of “proper assessment of merit in a selection process” in section 8, to confirm that the Public Sector Commissioner is the arbiter of the matter and to clarify that a proper merit assessment does not always mandate a competitive process.
- Clause 10**     **Section 9 amended**  
Provides for Commissioner’s instructions generally to be observed by all public sector bodies and employees.
- Clause 11**     **Part 2 Division 2 deleted**  
Removes Part 2 Division 2 of the former Act.
- Clause 12**     **Part 2 Division 3 heading replaced**  
Deletes the heading to Part 2 Division 3 of the former Act and replaces it with a new heading, “Part 3A – Public Sector Commissioner, Division 1 – Public Sector Commissioner”.
- Clause 13**     **Section 16 replaced**  
Establishes the office of the Public Sector Commissioner and provides that the office of the Public Sector Commissioner is not an office in the Public Service.
- Clause 14**     **Section 17 amended**  
Requires the Public Sector Commissioner to make a declaration before the Governor in the form of Schedule 4 (previously dealt with by the now deleted section 26).
- Clause 15**     **Section 19 amended**  
Entitles the Public Sector Commissioner to a leave of absence and other conditions of service as applicable to public service officers.

- Clause 16 Section 20 amended**  
Provides for a right to return for the Public Sector Commissioner (in the event of non-reappointment) to employment in the public sector on a basis reflective of previous status, whether that involved ongoing or finite term employment.
- Clause 17 Part 3A Division 2 heading inserted**  
Inserts the heading “Division 2 – Functions of Commissioner” after section 20.
- Clause 18 Section 21A inserted**  
Inserts a new section setting out the general functions of the Public Sector Commissioner in relation to matters of public sector effectiveness and efficiency.
- Clause 19 Section 21 amended**  
Provides that it is also a function of the Public Sector Commissioner to establish public sector standards and codes of ethics through Commissioner’s instructions. The Public Sector Commissioner may continue by order published in the *Gazette* to exempt the whole or any part of any public sector body from compliance with the whole or any part of a public sector standard or code of ethics.
- Provides for public sector standards and codes of ethics to override other Commissioner’s instructions where there is conflict. Facilitates consolidation of the Public Sector Commissioner’s reporting responsibilities under section 22D.
- Clause 20 Sections 22A to 22G inserted**  
Inserts the following provisions after section 21:
- Section 22A** enables the Public Sector Commissioner to issue written instructions, dealing generally with matters of public sector management and administration, including discipline. Such instructions, applicable to the public sector as the Public Sector Commissioner determines, unless constituted by public sector standards or codes of ethics, are not required to be *Gazetted* or dealt with as subsidiary legislation.
- Section 22B** enables the Public Sector Commissioner to effect the disposition of offices, posts and positions and employees and such other consequential changes as are necessary to give effect to machinery of government movements in the public sector.
- Section 22C** enables the Public Sector Commissioner to report from time to time to the Minister responsible for a public sector body on compliance by the body or employees of the body with the relevant principles under the Act and standards and codes.
- Section 22D** requires the Public Sector Commissioner to prepare an annual report to Parliament concerning compliance issues, the state of the sector and such other matters as the Public Sector Commissioner determines. Such a

report may form part of the Public Sector Commissioner's annual reporting under the *Financial Management Act 2006*.

**Section 22E** enables the Public Sector Commissioner to report to Parliament at any time during the year on a matter referred to in section 22D of the Act.

**Section 22F** requires the Public Sector Commissioner to transmit a copy of a report prepared under sections 22D or 22E to each House of Parliament and sets out the arrangements that are to apply when a House of Parliament is not sitting.

**Section 22G** provides the Public Sector Commissioner with all the powers to perform the functions of the Public Sector Commissioner.

**Clause 21 Section 22 amended**

Specifies that the Public Sector Commissioner is not subject to direction by the Minister or any other person in the performance of his or her functions.

**Clause 22 Section 23 replaced**

Replaces section 23 with a new section 23 which sets out the capacity of the Public Sector Commissioner to delegate any powers or duties.

**Clause 23 Part 3A Division 3 inserted**

Inserts a new "Division 3 – Reviews, special inquiries and investigations". The following provisions are inserted under the new Division 3:

**Subdivision 1 – Reviews**

**Section 24A** defines terminology in Division 3.

**Section 24B** provides for the Public Sector Commissioner to undertake a review. It also authorises the Minister to direct the Commissioner, in writing, to conduct a review into a public sector body. Such a direction must be reported in the Public Sector Commissioner's annual report to Parliament. The Commissioner is required to comply with the written direction unless the Commissioner considers there are exceptional circumstances for not complying, in which case those reasons must be reported in the Public Sector Commissioner's annual report.

**Section 24C** enables the Public Sector Commissioner to authorise a person to perform functions under Subdivision 1.

**Section 24D** sets out the powers of the Public Sector Commissioner for the purposes of a review. In addition to these powers, which reflect existing arrangements, an offence provision is included to cover non-compliance by a public sector employee.

**Section 24E** provides that the powers conferred by section 24D are only exercisable in relation to a public sector body after consultation with the employing authority of the public sector body, and the relevant Minister.

**Section 24F** maintains the current arrangements with regard to the privileges of an employee in relation to a requirement imposed under section 24D.

**Section 24G** requires the Public Sector Commissioner to provide the Minister with a written report on the conduct and findings of a review which the Minister has directed to be undertaken.

### **Subdivision 2 – Special Inquiries**

**Section 24H** authorises the Public Sector Commissioner, on his/her own initiative or on direction from the Minister, to arrange for the holding of a special inquiry into a matter related to the public sector. A direction by the Minister must be reported in the Public Sector Commissioner’s annual report to Parliament. The Public Sector Commissioner is required to comply with the written direction unless the Commissioner considers there are exceptional circumstances for not complying, in which case those reasons must be reported in the Public Sector Commissioner’s annual report.

**Section 24I** sets out the powers of a special inquirer (or person authorised by the special inquirer), and reflects the current arrangements.

**Section 24J** sets out matters relating to procedure and evidence at special inquiries, which reflect the current arrangements.

**Section 24K** requires a special inquirer to report on his/her findings within such period as the Public Sector Commissioner requires, and to provide the Public Sector Commissioner with a copy of the report immediately after preparing it. The Public Sector Commissioner must provide a copy of the report to the Minister if the Minister directed that the special inquiry be held.

### **Subdivision 3 – Investigations**

- Clause 24**     **Section 24 amended**  
Deletes subsection (2) of this section and requires an authorised person under subsection (1) to prepare a report on the conduct and findings of, and any recommendations resulting from, an investigation, within such period as the Public Sector Commissioner requires.
- Clause 25**     **Sections 25, 26 and 27 deleted**  
Deletes sections 25 to 27 of the former Act.
- Clause 26**     **Part 3A Division 4 heading inserted**  
Inserts the heading “Division 4 – Acting appointments” before section 28 of the Act.
- Clause 27**     **Section 28 amended**  
Sets out the circumstances in which the Governor may appoint an Acting Public Sector Commissioner and provides for the right of return to public

sector employment upon cessation on a similar basis to that of the Public Sector Commissioner.

- Clause 28      Sections 29A inserted**  
Sets out the arrangements applicable to an acting appointment made by the Public Sector Commissioner. Such an appointment may be made for a period of up to 13 weeks (that is, to cover an extended period of leave such as Long Service Leave) in any one year. An appointment by the Governor overrides an appointment by the Public Sector Commissioner.
- Clause 29      Part 2 Division 4 heading replaced**  
Replaces the heading to Part 2 Division 4 of the Act with “Part 3B – Chief executive officers and chief employees”.
- Clause 30      Section 29 amended**  
Provides for the functions under section 29(1)(h)(ii) to be exercised in accordance with Commissioner’s instructions, in lieu of approved classification systems and procedures, and includes specific reference to responsibility for taking “improvement action” in relation to an employee.
- Clause 31      Section 30 amended**  
Section 30(b) is amended to require chief executive officers and chief employees in performing their functions, to comply with, among other requirements, Commissioner’s instructions.
- Clause 32      Section 31 amended**  
Provides for compliance reports to be completed in accordance with Commissioner’s instructions, in lieu of guidelines. This clause also changes the cross-reference to annual reporting requirements.
- Clause 33      Section 32 amended**  
Requires compliance by chief executive officers and chief employees with Commissioner’s instructions generally. However, unless constituted by public sector standards or codes of ethics, such instructions do not override other written laws relating to the department or organisation.
- Clause 34      Section 33 replaced**  
The capacity of chief executive officers and chief employees to delegate their powers under the former section 33 of the Act is extended to cover “any person” and is not limited to, as at present, an employee in his or her department or organisation.
- Clause 35      Section 35 amended**  
Replaces the requirement in section 35(1) of the Act for the Governor to act on the recommendation of the Minister, with the requirement to act on the recommendation of the Public Sector Commissioner when exercising the powers associated with creating or changing Public Service departments.

Creates a power of the Minister to direct the Public Sector Commissioner to make a recommendation to the Governor. The Public Sector Commissioner is

required to comply with the Minister's direction, and the direction is to be included in the annual report submitted by the Public Sector Commissioner to Parliament.

**Clause 36 Section 36 amended**

Replaces the requirement to classify or alter classification of offices (other than section 39 offices) in accordance with approved procedures, with such powers to be exercised in accordance with Commissioner's instructions.

**Clause 37 Section 38 amended**

Transfers the role of the Governor, on the recommendation of the Minister, to determine that an office in the Public Service is an office included in the Special Division of the Public Service to the Public Sector Commissioner.

Authorises the Public Sector Commissioner to amend or revoke a determination made under section 38(1) of the Act.

**Clause 38 Section 40 amended**

Provides for public notification to occur in accordance with Commissioner's instructions

**Clause 39 Section 42 amended**

Deletes the authority of the Minister in section 42(2) of the Act to give to the employing authorities of agencies directions for the management of the Senior Executive Service. This will now be subject to Commissioner's instructions.

**Clause 40 Section 43 amended**

Amended to reflect the new role of the Commissioner and Commissioner's instructions.

**Clause 41 Section 45 amended**

Replaces sections of the Act with two new sections substantially reflecting continuation of existing processes but with necessary adjustments, taking into account the combined role (previously of the Minister and the Commissioner for Public Sector Standards) now undertaken by the Public Sector Commissioner. Notably,

- the Public Sector Commissioner will make the recommendation to the Governor;
- The Public Sector Commissioner must notify the Minister of the intended recommendation;
- The Public Sector Commissioner is subject at any time to direction by the Minister in relation to the recommendation to be made to the Governor;
- In the event that a direction is given, the Public Sector Commissioner must comply, the Minister must publish the text of that direction in the *Gazette* and the Public Sector Commissioner must include the text of that direction in the Public Sector Commissioner's annual report;
- The term of such a "directed" appointment is limited to term of Government but may be renewed.

- Clause 42 Section 46 amended**  
Provides for the responsibility of the Public Sector Commissioner to determine matters of CEO reappointment, subject to the opportunity being given for direction by the Minister under the preceding section. The section also allows for a CEO to be reappointed to “other functions” as distinct from a particular office.
- Clause 43 Section 47 amended**  
Requires chief executive officers to be subject to performance agreements with the Public Sector Commissioner and their responsible authorities; agreements also to be subject to prior approval by the relevant Minister. The timing (and other details) of such agreements is to be determined by Commissioner’s instructions rather than, as now, automatically tied to the financial year.
- Clause 44 Section 48 deleted**  
Deletes section 48 of the Act. That section served as a mechanism to ensure the Minister did not circumvent the involvement of the Commissioner for Public Sector Standards in overseeing the integrity of decision-making by simply letting a contract expire. As the Commissioner will effectively perform both functions, it is considered to be a redundant mechanism.
- Clause 45 Section 49 amended**  
Maintains the former section 49 of the Act, however reflects the new role for the Public Sector Commissioner and the deletion of the section 48 requirement from the removal process.
- Clause 46 Section 50 amended**  
Maintains existing processes of the Act, however reflects the new role for the Commissioner and the removal of the Minister from this process.
- Clause 47 Section 51 amended**  
Maintains existing processes of the Act, however reflects the new role for the Public Sector Commissioner and the removal of the Minister from this process.
- Clause 48 Section 53 amended**  
Reflects the new role for the Public Sector Commissioner to issue Commissioner’s instructions, in lieu of approved procedures.
- Clause 49 Section 56 amended**  
Takes into account the deletion of section 48 and the changes made to section 49 of the Act.
- Clause 50 Section 63 amended**  
Provides the capacity for the Public Sector Commissioner to authorise a public service officer to hold more than one Public Service office at the same time. Currently, one appointment automatically displaces another.



- Clause 51 Section 64 amended**  
Reflects the new role for the Public Sector Commissioner to issue Commissioner's instructions, in lieu of approved procedures.
- Clause 52 Section 67 amended**  
Provides the capacity for the Public Sector Commissioner to authorise a public service officer to hold more than one Public Service office at the same time. Currently, one appointment automatically displaces another.
- Clause 53 Section 70 amended**  
Facilitates the Minister responsible for administering the Act as a whole to be taken to be principally assisted by a department other than the office of the Public Sector Commissioner with respect to Part 4 matters (for example, the Department of the Premier and Cabinet). Consequently the Director General of that department becomes responsible for recommending terms and conditions of employment for ministerial officers.
- Clause 54 Section 75 amended**  
Facilitates the Minister responsible for administering the Act as a whole to be taken to be principally assisted by a department other than the office of the Public Sector Commissioner with respect to Part 4 matters (for example, the Department of the Premier and Cabinet). Consequently the Director General of that department becomes responsible for creating and filling special offices. It also clarifies that an officer of that department may effectively be seconded to fill a special office, albeit that there is only the one employing authority involved. Furthermore, it enables the Director General to arrange the classification review of seconded officers in accordance with Commissioner's instructions.
- Clause 55 Section 79 amended**  
Provides that the Governor may, on the recommendation of the Minister responsible for the relevant public sector body, terminate the employment in the Public Sector of an employee who was appointed by the Governor, for substandard performance, other than a chief executive officer.
- Inserts a new provision which provides that the Governor may, on the recommendation of the Commissioner, terminate the employment in the Public Sector of a chief executive officer whose performance is, in the opinion of the Commissioner, substandard. The Commissioner must consult the responsible authority.
- Clause 56 Section 93 amended**  
Taking into account the transfer of functions from the Minister to the Public Sector Commissioner, deletes the requirements placed on the Minister set out in sections 93(2), (4), (5) and (6) of the previous Act but maintains a requirement for the Public Sector Commissioner to consult with the Minister responsible for the *Industrial Relations Act 1979* in relation to areas involving contracting out or privatisation.

- Clause 57 Section 99 amended**  
Reflects the new role for the Public Sector Commissioner to issue Commissioner’s instructions, in lieu of approved procedures.
- Clause 58 Section 100 amended**  
Reflects the new role for the Public Sector Commissioner to issue Commissioner’s instructions, in lieu of approved procedures.
- Clause 59 Section 105 amended**  
Facilitates the Minister responsible for administering the Act as a whole to be taken to be principally assisted by a department other than the office of the Public Sector Commissioner with respect to Part 4 matters (for example, the Department of the Premier and Cabinet). Consequently the Director General of that department becomes an employing authority with whom discussions are permitted in regard to ministerial officer selection and appointment/engagement. It also maintains the capacity for Ministers to discuss amongst themselves CEO selection and appointment matters.
- Clause 60 Section 108A inserted**  
Inserts a new provision (in place of the deleted section 15) setting out the capacity of the Minister to delegate any power or duty.
- Clause 61 Section 108 amended**  
Inserts a new provision that regulations may make provision for or with respect to any matter for which the Commissioner’s instructions may provide and that these to the extent of any conflict have overriding effect. The obligation to comply with relevant Commissioner’s instructions is effectively transferred to the regulations.
- Clause 62 Part 9 Division 1 heading inserted**  
Inserts a new division under Part 9 of the Act entitled “Division 1 – *Public Service Act 1978* repeal and transitional provisions”.
- Clause 63 Part 9 Division 2 inserted**  
Inserts a new division under Part 9 of the Act entitled “Division 2 – *Public Sector Reform Act 2009* Part 2 amendments: transitional provisions”. The following provision is included in the new division:  
  
**Section 113** provides that Schedule 7 of the Act sets out the transitional provisions.
- Clause 64 Schedule 4 replaced**  
Schedule 4 of the former Act, “Form of declaration”, is replaced with a new Schedule 4 which provides a revised form of declaration.
- Clause 65 Schedule 5 amended**  
Provides that certain matters dealt with in the transition from the repealed *Public Service Act 1978* are now subject to Schedule 7 or the new mechanism of Commissioner’s instructions.

**Clause 66** **Schedule 7 inserted**

Inserts a new Schedule 7 entitled “Schedule 7 – *Public Sector Reform Act 2009* Part 2 amendments: transitional provisions”.

**Clause 1** defines terms.

**Clause 2** provides for the current incumbent CEO of the Public Sector Commission to be appointed Public Sector Commissioner for a five year term.

**Clause 3** deals with the employment entitlements of any incumbent Commissioner for Public Sector Standards or Acting Commissioner for Public Sector Standards.

**Clause 4** provides for the continuing effective operation, consistent with the revised administrative framework, of a range of procedures and other instruments in place under the Act.

**Clause 5** provides for any reviews, special inquiries and investigations already underway to continue under the revised arrangements.

**Clause 6** provides effectively for any special offices created under section 36 to be part of the Department of the Premier and Cabinet.

**Clause 7** provides for any actions underway involving the employment of chief executive officers to continue under the revised arrangements.

**Clause 8** provides for the continuing effect of things done under the provisions dealing with relief procedures for breach of standards.

**Clause 9** provides for any directions made under section 107(1) to be taken to be directions of the Commissioner.

**Clause 10** allows the Minister responsible for the Act to recommend to the Governor that various regulations be amended as one coordinated exercise. This will facilitate dealing with a number of regulations that refer to approval of the Minister for Public Sector Management or to the Commissioner for Public Sector Standards or that will require other consequential amendment as a result of the *Public Sector Reform Bill*. A similar approach was taken in the *Financial Management (Transitional Provisions) Act 2006*.

**Clause 11** provides for regulations to address any transitional matters that have not adequately been addressed by the Act. Such regulations may have retrospective effect to the time of commencement of the Act but not so as to prejudice any rights of, or impose liabilities on, persons prior to the date of gazettal.

**Clause 12** provides that the provisions of the Schedule do not affect the *Interpretation Act 1984*

- Clause 67**     **Various references to Minister amended**  
Provides a list of provisions in the Act in which the reference to “Minister” is to be replaced with “Commissioner”.
- Clause 68**     **References to “of the Crown” deleted**  
Provides a list of provisions in the Act in which the reference to “of the Crown” is to be deleted.
- Clause 69**     **Various cross-references amended**  
Provides a list of provisions in the Act in which the cross-references are to be amended as specified.
- Clause 70**     **Other provisions amended**  
Provides a list of provisions in the Act to be amended as specified.

***Division 2 – Other Acts Amended***

- Clause 71**     ***Agricultural Practices (Disputes) Act 1995 amended***  
Amends the *Agricultural Practices (Disputes) Act 1995* by substituting the references to “Minister to whom the administration of the *Public Sector Management Act 1994* is committed” and “Minister to whom administration of that Act is committed” for “Public Sector Commissioner”.
- Clause 72**     ***Auditor General Act 2006 amended***  
Amends the *Auditor General Act 2006* by substituting updated cross-references
- Clause 73**     ***Constitution Acts Amendment Act 1899 amended***  
Amends Schedule V Part 1 Division 2 of the *Constitution Acts Amendment Act 1899* by deleting the item relating to the Commissioner for Public Sector Standards and inserting “Public Sector Commissioner appointed under the *Public Sector Management Act 1994*”.
- Clause 74**     ***Corruption and Crime Commission Act 2003 amended***  
Amends the *Corruption and Crime Commission Act 2003* by substituting paragraph (e) of the definition of ***independent agency*** in section 3(1) for “Public Sector Commissioner”, and substituting section 90(6) for a new subsection which provides that a report about a person proposed to be appointed as a chief executive officer may be given to the Public Sector Commissioner and any Minister the Public Sector Commissioner considers has a relevant interest in the report.
- Clause 75**     ***Electricity Corporations Act 2005 amended***  
Amends the *Electricity Corporations Act 2005* by deleting the definition of *Commissioner for Public Sector Standards* in section 3(1), and in the provisions listed in the Table in subsection (3) of this clause, substitutes each occurrence of “Commissioner for Public Sector Standards” for “Public Sector Commissioner”.

- Clause 76** *Financial Management Act 2006 amended*  
Amends section 51(3) of the *Financial Management Act 2006* by substituting updated cross-reference.
- Clause 77** *Gas Pipelines Access (Western Australia) Act 1998 amended*  
Amends the *Gas Pipelines Access (Western Australia) Act 1998* by substituting the definition of *Commissioner* in section 63(11) for “*Commissioner* means the Public Sector Commissioner under the *Public Sector Management Act 1994*”, and substituting updated cross-referencing.
- Clause 78** *Interpretation Act 1984 amended*  
Amends section 5 of the *Interpretation Act 1984* by inserting a definition of *Public Sector Commissioner* and *public service officer* as provided in this clause.
- Clause 79** *Midland Redevelopment Act 1999 amended*  
Amends section 10 of the *Midland Redevelopment Act 1999* by substituting the reference to “Minister to whom the administration of the PSM Act is for the time being committed by the Governor” for “Public Sector Commissioner”.
- Clause 80** *Parliamentary Commissioner Act 1971 amended*  
Amends Schedule 1 of the *Parliamentary Commissioner Act 1971* by deleting the item relating to the *Public Sector Management Act 1994* and inserting “*Public Sector Management Act 1994*”, “Public Sector Commissioner to the extent 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*”.
- Clause 81** *Port Authorities Act 1999 amended*  
Amends the *Port Authorities Act 1999* by deleting the definition of *Commissioner for Public Sector Standards* in section 3(1), and in the provisions listed in the Table in clause 65(3) substituting each occurrence of the reference to “Commissioner for Public Sector Standards” and inserting “Public Sector Commissioner”.
- Clause 82** *Public Interest Disclosure Act 2003 amended*  
Amends the *Public Interest Disclosure Act 2003* by substituting the definition of *Commissioner* in section 3(1) for “*Commissioner* means the person holding the office of Public Sector Commissioner established by the *Public Sector Management Act 1994* section 10”, and substituting the heading to Part 4 with “Part 4 – Role of Public Sector Commissioner”.
- Clause 83** *Salaries and Allowances Act 1975 amended*  
Amends section 6(4)(b) of the *Salaries and Allowances Act 1975* by substituting the reference to “chief executive officer of the department principally assisting the Minister in the administration of the *Public Sector Management Act 1994*” with “Public Sector Commissioner”.

- Clause 84** *State Administrative Tribunal Act 2004 amended*  
Amends section 121(2) of the *State Administrative Tribunal Act 2004* by substituting the reference to “Commissioner for Public Sector Standards” with “Public Sector Commissioner”.
- Clause 85** *State Records Act 1994 amended*  
Amends section 69(2) of the *State Records Act 2000* by substituting updated cross-referencing.
- Clause 86** *Subiaco Redevelopment Act 1994 amended*  
Amends the *Subiaco Redevelopment Act 1994* by deleting the definition of *Public Service Act* in section 2, substituting the reference to “Minister to whom the administration of the Public Service Act is for the time being committed by the Governor” with “Public Sector Commissioner” in sections 10 and 15(1), and substituting the reference to “Public Service Act” with “*Public Sector Management Act 1994*” in sections 14(1) and 17.
- Clause 87** *Water Corporation Act 1995 amended*  
Amends the *Water Corporation Act 1995* by deleting the definition of *Commissioner for Public Sector Standards* in section 3(1), and in the provisions listed in the Table substituting the references to “Commissioner for Public Sector Standards” with “Public Sector Commissioner”.
- Clause 88** *Western Australian Land Authority Act 1992 amended*  
Amends the *Western Australian Land Authority Act 1992* by deleting the definition of *Commissioner for Public Sector Standards* in section 4(1), and in the provisions listed in the Table substituting the references to “Commissioner for Public Sector Standards” with “Public Sector Commissioner”.
- Clause 89** **Various references to “Minister for Public Sector Management” amended**  
Provides a list of provisions in various Acts in which the reference to “Minister for Public Sector Management” is to be replaced with “Public Sector Commissioner”.
- Clause 90** **Various references to “Public Service Board” amended**  
Provides a list of provisions in various Acts in which the reference to the “Public Service Board” is to be replaced with “Public Sector Commissioner”.

### **PART 3 – PUBLIC SECTOR DISCIPLINE AMENDMENTS**

#### ***Division 1 – Public Sector Management Act 1994 amended***

- Clause 91** **Act amended**  
Provides that this Division amends the *Public Sector Management Act 1994*.

- Clause 92 Section 3 amended**  
Deletes the definition of *respondent*, and inserts a new definition to *disciplinary action* and *special disciplinary inquiry*.
- Clause 93 Section 76 amended**  
Specifies that section 76(1) of the Act, which provides for the application of Part 5, is subject to subsections (3) and (4).  
  
Inserts subsections (4) – (8) in section 76, which provide for the following:
- a former employee who may have committed a breach of discipline, who was an employee at the time the suspected breach occurred, is to be taken to be an employee for the purposes of this Part in circumstances specified in the Commissioner’s instructions;
  - the Commissioner’s instructions may specify that disciplinary action may be taken in respect of a former employee, and the provisions of this Part apply as if the former employee were an employee;
  - the taking of disciplinary action with respect to a former employee does not affect the employee’s retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation;
  - for the purposes of this Part, a former employing authority of an employee is to be taken to be the employing authority of the employee;
  - nothing in this Part limits the power of an employing authority to take improvement action in circumstances where the employing authority considers it appropriate to do so.
- Clause 94 Section 78 amended**  
Provides for employees as well as former employees to appeal against a decision or finding as defined in the new subsection (1)(b).  
  
Replaces ‘decision’ with ‘direction’ in subsection 78(4), to more accurately reflect the employing authority’s requirement to dismiss an employee if he or she is found to have committed a section 94(4) breach of discipline.  
  
Subsection (5) clarifies that an employer’s technical non-compliance with the statute, or principles of natural justice, of itself would not render the decision or finding invalid but that the Industrial Relations Commission may either:
- decide the matter on its merits, or
  - quash the agency’s decision/finding and direct the agency to re-commence at the point directed by the WAIRC, should the agency choose to continue with the disciplinary matter.
- Clause 95 Section 80A inserted**  
Inserts a new provision under Part 5 Division 3 of the Act which defines specified terms used in Division 3 of the Act.
- Clause 96 Section 81 replaced**  
Replaces section 81 of the Act with two new provisions.

**Section 81** sets courses of action available to employing authorities upon becoming aware that an employee may have committed a breach of discipline.

**Section 82A** sets out the procedure when an allegation is made, and authorises the action that can be taken.

**Clause 97 Section 82 replaced**

Replaces the former section 82 of the Act dealing with suspension without pay, and provides that an employing authority may suspend an employee on full pay, partial pay, or without pay.

**Clause 98 Sections 83, 84, 85 and 86 deleted**

Deletes sections 83, 84, 85 and 86 of the Act.

**Clause 99 Section 87 amended**

Inserts two new subclauses under section 87 of the Act, providing that the Commissioner may at any time before a decision is made under sections 82A(1)(b)(c) or 82B (at the request of the employing authority or otherwise) direct that a special disciplinary inquiry be held or an investigation by the employing authority, or a person directed under section 82A be converted into a special disciplinary inquiry.

Replaces the requirements imposed on a person at the conclusion of a special disciplinary inquiry in section 87(3) of the former Act with a new set of requirements. These specify that a person must, at the conclusion of the inquiry, make a finding and prepare a report

**Clause 100 Section 88 replaced**

Replaces the former section 88 of the Act with a new section 88, which still requires the employing authority to accept a special disciplinary inquiry report finding and allows a departure from a recommendation regarding action to be taken on breach being established, but omits the former role of the PSM Minister.

**Clause 101 Section 89 replaced**

Replaces the former section 89 of the Act with a new section 89 dealing with the dismissal of a chief executive officer on disciplinary grounds to reflect the change of the employing authority such that it is now the Public Sector Commissioner who is responsible for the action.

**Clause 102 Section 90 amended**

Replaces the references to “respondent” in section 90 of the Act with “employee”. This clause also amends section 90(b) of the Act by maintaining the requirement of the employing authority to notify an employee of any finding made and what action may be taken, however this must be done within the period prescribed in the Commissioner’s instructions (as opposed to the “prescribed period”).



- Clause 103 Section 91 amended**  
Replaces the references to “respondent” in section 91 of the Act with “employee”.
- Clause 104 Section 92 replaced**  
Replaces section 92 of the former Act with a new section 92, which provides that if an employee is convicted of a serious offence (as defined in the Act), the employing authority may take disciplinary and/or improvement action. Inserts a new section 93A dealing with implementation of decisions under Part to take disciplinary or improvement action with respect to an employee.
- Clause 105 Section 94 amended**  
Replaces the reference to “dismissed under section 86(3)(a) or (9)(b)(i), 88(1)(b)(i) or 89(1)” in section 94(2)(d) of the Act with “dismissed pursuant to a decision under section 82B(2), 88 or 89”.
- Clause 106 Part 9 Division 3 inserted**  
Inserts a new division before Schedule 1 of the Act, “Division 3 – *Public Sector Reform Act 2009* Part 3 amendments: transitional provisions”, and inserts a new section 114 which provides that Schedule 8 of the Act sets out transitional provisions.
- Clause 107 Schedule 8 inserted**  
Inserts a new Schedule 8 entitled “*Public Sector Reform Act 2009* Part 3 amendments: transitional provisions”.

***Division 2 – Other Acts amended***

- Clause 108 *Industrial Relations Act 1979* amended**  
Amends section 80I(1) of the *Industrial Relations Act 1979* by inserting “or finding” after the reference to “decision” in paragraphs (b) and (d).
- Clause 109 *School Education Act 1999* amended**  
Amends the *School Education Act 1999* by deleting the reference to “an employing authority that is not the Minister (within the meaning in that Part)” in section 239(1)(b), deleting section 239(2) and inserting a new subclause, amending section 240(1)(a) to replace the reference to a person being “guilty of an act or omission that comes within” with “may have committed a breach of discipline as referred to in”, and deleting section 240(1)(c)(ii) and “or” after it and inserting a new subparagraph.