

Version No. 018
Public Administration Act 2004
No. 108 of 2004

Version incorporating amendments as at 11 December 2008

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Public Administration Act 2004
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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are to—

- (a) provide a framework for good governance in the Victorian public sector and in public administration generally in Victoria;
- (b) establish a State Services Authority;
- (c) enable certain public sector employees to apply to the Public Sector Standards Commissioner for relief in respect of termination of employment on the ground that the termination was harsh, unjust or unreasonable;
- (d) give a role to the Public Sector Standards Commissioner to deal with applications by certain Parliamentary officers under the **Parliamentary Administration Act 2005** for relief in respect of termination of employment on the ground that the termination was harsh, unjust or unreasonable.

S. 1(c)
substituted by
No. 80/2006
s. 4(1).

S. 1(d)
substituted by
No. 80/2006
s. 4(1).

* * * * *

S. 1(e)(f)
repealed by
No. 80/2006
s. 4(1).

2 Commencement

- (1) Subject to subsection (2), this Act (including the items in Schedule 3) comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 January 2006, it comes into operation on that day.

3 Objects

The objects of this Act are—

- (a) to ensure the maintenance of an apolitical public sector;
- (b) to foster a public sector that—
 - (i) responds to government priorities in a manner that is consistent with public sector values;
 - (ii) provides effective, efficient and integrated service delivery;
 - (iii) is accountable for its performance;
- (c) to establish values and principles to guide conduct and performance within the public sector;
- (d) to ensure that employment decisions in the public sector are based on merit;
- (da) so far as possible—
 - (i) to ensure the preservation of any rights of public sector employees to seek relief in respect of termination of employment that may have been removed by amendments made to the Workplace Relations Act 1996 of the Commonwealth by the Workplace Relations Amendment (Work Choices) Act 2005 of the Commonwealth;

S. 3(da)
inserted by
No. 80/2006
s. 4(2).

-
- (ii) to assist in giving effect to Australia's international obligations in relation to labour standards including under the Termination of Employment Convention, 1982 (convention concerning termination of employment at the initiative of the employer);
 - (e) to promote the highest standards of governance in the public sector;
 - (f) to promote the highest standards of integrity and conduct for persons employed within the public sector;
 - (g) to strengthen the professionalism and adaptability of the public sector;
 - (h) to promote knowledge and understanding of good public administration within the Victorian community.

4 Definitions

(1) In this Act—

action includes a refusal or failure to take an action;

Administrative Office means a body or group existing as an Administrative Office in relation to a Department by virtue of an Order made under section 11;

Administrative Office Head means a person employed as an Administrative Office Head under section 12;

advisory entity means a public entity that does not have any function to exercise other than the provision of advice or a report to any person or body;

appropriate public service body Head means—

- (a) in relation to a public service body—
the public service body Head; or
- (b) in relation to an employee—the Head
of the public service body to which that
employee belongs;

Authority means State Services Authority;

board, in relation to a public entity, means—

- (a) in the case of a public entity that has a
governing body (by whatever name
called), that governing body; and
- (b) in any other case, the members of the
public entity or, in the case of a
Commissioner entity, the person who
comprises the Commissioner entity;

chairperson, in relation to a public entity other
than a Commissioner entity, means the
person who presides at meetings of the
public entity or, in the case of a public entity
that has a governing body, at meetings of
that governing body;

code of conduct means a code of conduct issued
under section 63;

Commissioner entity means a public entity that
consists of, or the governing body of which
consists of, only one person;

declared authority means an authority specified in
an Order made under section 104(2)(a);

Department means a Department existing by
virtue of an Order made under section 10;

Department Head means a person employed as a
Department Head under section 12;

detrimental action includes—

- (a) action causing injury, loss or damage;
and
- (b) intimidation or harassment;

director, in relation to a public entity, means a member of the board of the public entity;

employee means a person employed under Part 3 in any capacity and includes a public service body Head;

executive means a person employed under Part 3 as a public service body Head or other executive;

exempt body means—

- (a) a committee established under the **Parliamentary Committees Act 2003**;
or
- (b) a Council within the meaning of the **Local Government Act 1989**; or
- (c) a court; or
- (d) the Office of Public Prosecutions or the Committee for Public Prosecutions; or
- (e) a university within the meaning of the **Education and Training Reform Act 2006**; or
- (f) a body to which, or to the governing body of which, the government of another jurisdiction, or a person appointed or body established under the law of another jurisdiction, has the right to appoint a member, irrespective of how that right arises;

S. 4(1) def. of *exempt body* amended by No. 24/2006 s. 6.1.2(Sch. 7 item 33.1).

exempt body official means—

- (a) a person employed by an exempt body;
or
- (b) the holder of an office in, or on the governing body of, an exempt body;

non-executive employee means a person employed under Part 3 other than as an executive;

Official Secretary means the Head of the Administrative Office referred to in section 12(3);

prerogative office means an office under the Crown (other than a statutory office) to which the right to appoint is vested in the Governor in Council;

prescribed office means an office specified in section 16(1);

prescribed officer means an office-holder specified in section 16(1);

public entity has the meaning given in section 5;

public entity Head means chief executive officer (by whatever name called) of a public entity;

public official means—

- (a) a public sector employee;
- (b) a person employed under Division 3 of Part 6;
- (c) a Parliamentary officer within the meaning of the **Parliamentary Administration Act 2005**;
- (d) the holder of a statutory office or a prerogative office;

S. 4(1) def. of *public official* amended by No. 20/2005 s. 52(1).

-
- (e) a director of a public entity—
but does not include—
- (f) the Governor or the Lieutenant-Governor;
 - (g) a judge, a magistrate, a coroner appointed under the **Coroners Act 1985** or a member of VCAT;
 - (h) a responsible Minister of the Crown or a Parliamentary Secretary;
 - (i) the President of the Legislative Council or the Speaker of the Legislative Assembly;
 - (j) a Ministerial officer employed under Division 1 of Part 6;

public sector means the sector that comprises—

- (a) the public service; and
- (b) public entities; and
- (c) special bodies;

public sector body means—

- (a) a public service body; or
- (b) a public entity; or
- (c) a special body;

public sector body Head means—

- (a) in relation to a public service body, the public service body Head;
- (b) in relation to a public entity, the public entity Head;
- (c) in relation to a special body, the special body Head;

public sector employee means—

- (a) an employee; or
- (b) a person employed by a public entity or special body;

public sector employment principles means the principles set out in section 8;

public sector values means the values set out in section 7;

public service means the public service of Victoria under Part 3;

public service body means—

- (a) a Department; or
- (b) an Administrative Office; or
- (c) the State Services Authority;

public service body Head means—

- (a) in relation to a Department—the Head of that Department; or
- (b) in relation to an Administrative Office—the Head of that Administrative Office; or
- (c) in relation to the State Services Authority—the chief executive officer of that Authority;

public service body Minister means—

- (a) in relation to a public service body—the Minister responsible for the public service body; or
- (b) in relation to an employee—the Minister responsible for the public service body to which the employee belongs;

small entity means a public entity that—

- (a) satisfies any criteria relating to assets, income or turnover prescribed for the purposes of this paragraph; or
- (b) has no control over the expenditure of public funds—

but does not include a public entity, or a class of public entity, that is declared under section 75(c) not to be a small entity for the purposes of Part 5;

special body has the meaning given in section 6;

special body Head means chief executive officer (by whatever name called) of a special body;

standard means standard issued under section 64(5) or 66(2);

standard entity means a public entity other than—

- (a) an advisory entity; or
- * * * * *
- (c) except in section 95, a public entity that exercises functions that are of a quasi-judicial nature; or
- (d) a small entity;

S. 4(1) def. of *standard entity* amended by No. 20/2005 s. 47.

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

Victoria Police has the same meaning as *the force* has in the **Police Regulation Act 1958**.

(2) In this Act—

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

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) A reference in this Act to the Minister responsible for a public service body or a public entity is a reference to the Minister responsible for the relevant part of that body or entity if, for the time being, different Ministers are responsible for different parts of that body or entity.

5 What are public entities?

- (1) For the purposes of this Act a public entity is a body, whether corporate or unincorporated—
- (a) that is established—
 - (i) by or under an Act (other than a private Act) or the Corporations Act; or
 - (ii) by the Governor in Council; or
 - (iii) by a Minister; and
 - (b) in the case of a body corporate, the right to appoint at least one half of the directors of which is vested in the Governor in Council or a Minister or could have been so vested in the case of a body corporate established by an Order made by the Governor in Council or a Minister under the power given by the Act under which the Order is made; and
 - (c) that has a public function to exercise on behalf of the State or is wholly owned by the State; and
 - (d) in the case of a body that does not have any function to exercise other than the provision of advice or a report to any person or body—
 - (i) has written terms of reference guiding its operation; and

S. 5(1)(b)
amended by
No. 80/2006
s. 7(1).

- (ii) is required to provide the advice or report to a Minister or the Government; and
- (iii) is declared to be a public entity for the purposes of this Act—
 - (A) by the Act or subordinate instrument or other document under which it is established; or
 - (B) by an Order under subsection (3)—

but does not include—

- (da) a Department or an Administrative Office; or

S. 5(1)(da)
inserted by
No. 80/2006
s. 7(2).

- (e) an exempt body; or
- (f) a special body in its capacity as a special body; or
- (g) a community health centre within the meaning of the **Health Services Act 1988** or a body that provides aged care services that is, or is capable of being, registered under that Act; or
- (h) a body, or a class of body, that is declared by an Order under subsection (2) not to be a public entity for the purposes of this Act.

- (1A) To avoid doubt and without limiting subsection (1), the following are public entities for the purposes of this Act—

S. 5(1A)
inserted by
No. 20/2005
s. 48.

- (a) the board of a TAFE institute within the meaning of the **Education and Training Reform Act 2006** (other than the TAFE division of a university);

S. 5(1A)(a)
substituted by
Nos 24/2006
s. 6.1.2(Sch. 7
item 33.2(a)),
58/2007
s. 54(1).

S. 5(1A)(b)
amended by
Nos 24/2006
s. 6.1.2(Sch. 7
item 33.2(b)),
58/2007
s. 54(2).

(b) the Board of AMES and the Board of the Centre for Adult Education, within the meaning of the **Education and Training Reform Act 2006**.

- (2) The Governor in Council may, by Order published in the Government Gazette, declare a body, or a class of body, not to be a public entity for the purposes of this Act.
- (3) The Governor in Council may, by Order published in the Government Gazette, declare a body, or a class of body, that does not have any function to exercise other than the provision of advice or a report to any person or body and that satisfies the requirements of subsection (1)(d)(i) and (ii) to be a public entity for the purposes of this Act.
- (4) If an exempt body is a public entity for the purposes of this Act in a capacity other than its capacity as an exempt body, nothing in this Act that applies to the body as a public entity applies to the body in its capacity as an exempt body.

Example

A municipal council is appointed as a committee of management under section 14(2) of the **Crown Land (Reserves) Act 1978**. As a committee of management the municipal council is a public entity as it is established under an Act with a public function to exercise on behalf of the State. It is not, however, a public entity in its ordinary role as a municipal council because, in that role, it is an exempt body and exempt bodies are not public entities.

- (5) If—
 - (a) a provision of an Act other than this Act has the effect that a body (an **advisory body**) or a member of an advisory body or of the governing body (by whatever name called) of an advisory body is not subject to this Act—

-
- (i) other than Part 5; or
 - (ii) other than Part 5 or except in accordance with Part 7; and
- (b) the advisory body does not have any function to exercise other than the provision of advice or a report to any person or body—
- despite the provision of that other Act, the advisory body is not a public entity for the purposes of this Act unless the requirements of subparagraphs (i), (ii) and (iii) of subsection (1)(d) are satisfied in respect of it.
- (6) If a provision of an Act other than this Act has the effect that a body (a **relevant body**) or a member of a relevant body or of the governing body (by whatever name called) of a relevant body is not subject to this Act—
- (a) other than Part 5; or
 - (b) other than Part 5 or except in accordance with Part 7—
- despite the provision of that other Act, the relevant body may be declared by an Order under subsection (2) not to be a public entity for the purposes of this Act.

6 What are special bodies?

- (1) Subject to subsection (4), for the purposes of this Act the following are special bodies—
 - (a) a department of the Parliament of Victoria;
 - (b) the Electoral Boundaries Commission;
 - (ba) the office of the Commissioner for Law Enforcement Data Security;
 - (c) the office of the Health Services Commissioner;

S. 6(1)(ba)
inserted by
No. 84/2005
s. 19.

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- (d) the office of the Ombudsman;
 - (e) the Office of Police Integrity;
 - (f) the office of the Privacy Commissioner;
 - (g) the State Coroner's Office;
 - (h) VCAT;
 - (i) the Victorian Auditor-General's Office;
 - (j) the Victorian Electoral Commission;
 - (k) Victoria Police;
 - (l) a body that is declared by an Order under subsection (2) to be a special body for the purposes of this Act.
- (2) The Governor in Council may, by Order published in the Government Gazette, declare a body to be a special body for the purposes of this Act.
- (3) An Order cannot be made under subsection (2) in relation to an exempt body.
- (4) The Governor in Council may, by Order published in the Government Gazette, declare a body specified in any paragraph of subsection (1) not to be a special body for the purposes of this Act and, while that Order is in force, this Act has effect as if that paragraph were not included in subsection (1).
-

PART 2—PUBLIC SECTOR VALUES AND EMPLOYMENT PRINCIPLES

7 Public sector values

- (1) The following are the public sector values—
- (a) **responsiveness**—public officials should demonstrate responsiveness by—
 - (i) providing frank, impartial and timely advice to the Government; and
 - (ii) providing high quality services to the Victorian community; and
 - (iii) identifying and promoting best practice;
 - (b) **integrity**—public officials should demonstrate integrity by—
 - (i) being honest, open and transparent in their dealings; and
 - (ii) using powers responsibly; and
 - (iii) reporting improper conduct; and
 - (iv) avoiding any real or apparent conflicts of interest; and
 - (v) striving to earn and sustain public trust of a high level;
 - (c) **impartiality**—public officials should demonstrate impartiality by—
 - (i) making decisions and providing advice on merit and without bias, caprice, favouritism or self-interest; and
 - (ii) acting fairly by objectively considering all relevant facts and fair criteria; and
 - (iii) implementing Government policies and programs equitably;
-

-
- (d) **accountability**—public officials should demonstrate accountability by—
- (i) working to clear objectives in a transparent manner; and
 - (ii) accepting responsibility for their decisions and actions; and
 - (iii) seeking to achieve best use of resources; and
 - (iv) submitting themselves to appropriate scrutiny;
- (e) **respect**—public officials should demonstrate respect for colleagues, other public officials and members of the Victorian community by—
- (i) treating them fairly and objectively; and
 - (ii) ensuring freedom from discrimination, harassment and bullying; and
 - (iii) using their views to improve outcomes on an ongoing basis;
- (f) **leadership**—public officials should demonstrate leadership by actively implementing, promoting and supporting these values;
- (g) **human rights**—public officials should respect and promote the human rights set out in the Charter of Human Rights and Responsibilities by—
- (i) making decisions and providing advice consistent with human rights; and
 - (ii) actively implementing, promoting and supporting human rights.

S. 7(1)(f)
amended by
No. 43/2006
s. 47(Sch.
item 5.1).

S. 7(1)(g)
inserted by
No. 43/2006
s. 47(Sch.
item 5.2).

- (2) Subject to subsections (3) and (3A), a public sector body Head must promote the public sector values to public officials employed in the body and ensure that any statement of values adopted or applied by the body is consistent with the public sector values.
- (3) Subsection (2), in its application to a special body or with respect to a person employed under Division 3 of Part 6 by a public service body Head, does not extend to the public sector values referred to in subsections (1)(a)(i) and (1)(c)(iii).
- (3A) Subsection (2), in its application to a public entity that exercises functions that are of a quasi-judicial nature or with respect to a director of such a public entity in the exercise of such functions, does not extend to the public sector values referred to in subsections (1)(a)(i) and (1)(c)(iii).
- (4) Nothing in subsection (1)—
- (a) creates in any person any legal right or gives rise to any civil cause of action; or
 - (b) subject to subsection (5), affects the rights or liabilities of—
 - (i) a public official; or
 - (ii) a public sector body.
- (5) Subsection (4) does not affect the status or enforcement in accordance with this Act of a code of conduct or any other instrument created under this Act that is based on the public sector values.

S. 7(2)
amended by
No. 80/2006
ss 8(1), 24(1).

S. 7(3A)
inserted by
No. 80/2006
s. 8(2).

8 Public sector employment principles

Public sector body Heads must establish employment processes that will ensure that—

- (a) employment decisions are based on merit; and

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Part 2—Public Sector Values and Employment Principles

s. 8

S. 8(ca)
inserted by
No. 43/2006
s. 47(Sch.
item 5.3).

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- (b) public sector employees are treated fairly and reasonably; and
 - (c) equal employment opportunity is provided; and
 - (ca) human rights as set out in the Charter of Human Rights and Responsibilities are upheld; and
 - (d) public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment; and
 - (e) in the case of public service bodies, the development of a career public service is fostered.
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PART 3—PUBLIC SERVICE EMPLOYMENT

Division 1—Structure

9 The public service

The public service of Victoria consists of the persons employed under this Part.

Division 2—Public service bodies

10 Departments

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

- (a) establish a Department; or
- (b) abolish a Department; or
- (c) change the name of a Department.

11 Administrative Offices

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

- (a) establish a body or group as an Administrative Office in relation to a Department; or
- (b) abolish an Administrative Office; or
- (c) change the name of an Administrative Office.

Note

A *public service body* is defined in section 4(1) as being a Department, an Administrative Office or the State Services Authority. This Division provides for the establishment of Departments and Administrative Offices. The State Services Authority is established by Part 4.

Division 3—Public service body Heads

12 Public service body Heads

- (1) Each Department shall have a Department Head and each Administrative Office shall have an Administrative Office Head.
- (2) Subject to subsection (3), the Premier, on behalf of the Crown, may employ a person as a Department Head or Administrative Office Head.
- (3) Only a person approved by the Governor in Council may be employed as the Head of an Administrative Office established to service the office of Governor.

13 General responsibility of Department Heads

A Department Head is responsible to the public service body Minister or Ministers for the general conduct and the effective, efficient and economical management of the functions and activities of—

- (a) the Department; and
- (b) any Administrative Office existing in relation to the Department—

and must advise the public service body Minister or Ministers in all matters relating to the Department and any such Administrative Office.

14 Responsibility of Administrative Office Heads

- (1) An Administrative Office Head is responsible to the Head of the Department in relation to which the Administrative Office exists for the general conduct and the effective, efficient and economical management of the functions and activities of the Administrative Office and must advise that Department Head in all matters relating to the Administrative Office.

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- (2) Subsection (1) does not apply to functions conferred on an Administrative Office Head by or under an Act other than this Act.
 - (3) An Administrative Office Head has, in relation to an Administrative Office, the same functions as a Department Head has in relation to a Department.

15 Duty to act independently in employment matters

- (1) A public service body Head is not subject to direction in relation to the exercise of his or her employer powers referred to in section 20 in respect of any individual but must act independently.
- (2) This section has effect despite sections 13 and 14 but is subject to any other express provision to the contrary in this Act.

16 Persons with functions of public service body Head

- (1) Despite anything to the contrary in this Act, the following office holders have all the functions of a public service body Head in relation to employees in the following offices—
 - (a) the Auditor-General in relation to the Victorian Auditor-General's Office;
 - (b) the Chairperson within the meaning of the **Essential Services Commission Act 2001** in relation to the office of the Essential Services Commission;
 - (c) the Chief Commissioner of Police in relation to the office of the Chief Commissioner of Police;
 - (d) the Commissioner for Environmental Sustainability in relation to the office of the Commissioner under the **Commissioner for Environmental Sustainability Act 2003**;

s. 16

- (e) the Director, Police Integrity in relation to the Office of Police Integrity;
- (f) the Electoral Commissioner in relation to the office of the Victorian Electoral Commission;

S. 16(1)(fa)
inserted by
No. 30/2005
s. 11(1),
repealed by
No. 30/2005
s. 11(2).

* * * * *

S. 16(1)(g)
substituted by
No. 108/2004
s. 117(2).

- (g) the Legal Services Commissioner in relation to the office of the Legal Services Commissioner;
 - (h) the Ombudsman in relation to the office of the Ombudsman;
 - (i) the Privacy Commissioner in relation to the office of the Privacy Commissioner;
 - (j) the Solicitor for Public Prosecutions in relation to the Office of Public Prosecutions;
 - (k) the Special Investigations Monitor in relation to the office of the Special Investigations Monitor;
 - (l) the office holder specified, in relation to the office specified, in an Order made under subsection (3) for the purposes of this paragraph.
- (2) This Act (except section 17) applies to an office specified in subsection (1) or in an Order under subsection (3) as if any reference in this Act to—
- (a) a public service body or the public service were a reference to that office; and
 - (b) an employee were a reference to an employee in that office; and

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- (c) an executive were a reference to a person employed in that office as an executive; and
 - (d) a public service body Head were a reference to the office holder specified in relation to that office in that subsection or Order.
- (3) The Governor in Council may, by Order published in the Government Gazette, specify for the purposes of paragraph (1) of subsection (1) an office holder and an office in relation to that office holder.

17 Performance review of public service body Heads

- (1) The State Services Authority must, at the direction of the Premier, review the performance of a public service body Head, either generally or in respect of a particular matter.
- (2) In exercising its functions under subsection (1), the State Services Authority must report to the Premier on the manner and extent to which the public service body Head is fulfilling all of the requirements imposed on him or her, whether under this Act or otherwise.

18 Delegation

- (1) A public service body Head may, by instrument, delegate to any person or persons or body any of his or her functions under this Act, including any function delegated to him or her under this Act.
- (2) A delegate of a function under subsection (1) may, subject to any conditions to which the delegation is subject, sub-delegate that function to any other person or persons or body if the instrument of delegation authorises its sub-delegation.

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

19 Acting assignment as public service body Head

- (1) The Premier may assign any person to act as a public service body Head if no-one is currently employed as that public service body Head or the person so employed is suspended from duty or is sick or absent.
- (2) A person, while acting as a public service body Head, has all the functions of the public service body Head but is not, only because of that assignment, to be taken to be an executive for the purposes of this Act.
- (3) The Premier may, at any time, terminate the assignment of a person as a public service body Head.
- (4) This section only applies to the State Services Authority if the chief executive officer of the Authority is also the Authority's chairperson.

Division 4—Employees

20 Employment and retirement

- (1) A public service body Head, on behalf of the Crown, has all the rights, powers, authorities and duties of an employer in respect of the public service body and employees in it.
- (2) Without limiting subsection (1), the appropriate public service body Head—
- (a) may employ as many persons as are required for the exercise of the functions of the public service body;
 - (b) may assign work to employees;

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- (c) may issue lawful instructions that must be observed by employees;
 - (d) may determine (with the approval of the Premier in the case of an executive) the remuneration (including an increase or reduction in remuneration) and other terms and conditions of employment of any individual employee;
 - (e) may pay allowances, bonuses or gratuities to employees;
 - (f) may transfer employees to duties in other public service bodies or in public entities;
 - (g) may suspend employees from duty with pay;
 - (h) may terminate the employment of employees;
 - (i) may second employees to other bodies or take persons on secondment from other bodies;
 - (j) may authorise periods of leave of absence for employees or make payments to employees in lieu of leave.
- (3) A public service body Head, in exercising a right, power, authority or duty referred to in this section, must do so in conformity with—
- (a) the public sector values; and
 - (b) any binding code of conduct; and
 - (c) the public sector employment principles; and
 - (d) standards issued by the Public Sector Standards Commissioner; and
 - (e) any other relevant provisions of this Act or the regulations.
- (4) An employee may retire from the public service on reaching the age of 55 years.
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21 Probation

- (1) Without limiting section 20, a person employed in the public service may be employed on probation for a period of 3 months.
- (2) If a person is employed on probation, the appropriate public service body Head must—
 - (a) on completion of the period of probation, extend that period or confirm the employment; or
 - (b) during or on completion of the period of probation, terminate the employment.
- (3) If the appropriate public service body Head extends a period of probation, he or she must notify the employee in writing of the reasons for the extension.

22 Dealing with misconduct

- (1) The regulations may establish procedures for dealing with any allegation of misconduct on the part of an employee and empower the imposition of penalties for misconduct which may include reduction in salary or classification or both, suspension or dismissal.
 - (2) For the purposes of this section *misconduct* includes—
 - (a) a contravention of a provision of this Act, the regulations or a binding code of conduct;
 - (b) improper conduct in an official capacity;
 - (c) a contravention, without reasonable excuse, of a lawful direction given to the employee as an employee by a person authorised (whether under this Act or otherwise) to give the direction;
 - (d) an employee making improper use of his or her position for personal gain;
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- (e) an employee making improper use of information acquired by him or her by virtue of his or her position to gain personally or for anyone else financial or other benefits or to cause detriment to the public service or the public sector.

S. 22(2)(e)
amended by
No. 29/2006
s. 3(Sch. 1
item 32).

Division 5—Executives

23 Who are executives for the purposes of this Division?

- (1) A person is an executive for the purposes of this Division if he or she—
- (a) is employed as an executive under this Part; or
 - (b) holds a statutory office which is a declared authority; or
 - (c) holds a prerogative office which is a declared authority; or
 - (d) is employed by a declared authority and the Governor in Council, by Order published in the Government Gazette, has declared that employment to be employment as an executive.
- (2) An Order under subsection (1)(d) must specify the person or body that is to be the employer of the executive for the purposes of this Division.
- (3) The Governor in Council may, by Order published in the Government Gazette, revoke or amend any declaration under subsection (1)(d).
- (4) If a person ceases to be an executive because of an Order made under subsection (3), the person's employment by the declared authority is not thereby terminated.

- (5) An Order made under subsection (1)(d) or (3) may contain provisions of a savings or transitional nature consequent on a person becoming or ceasing to be an executive.

24 Who are employers for the purposes of this Division?

The employer of an executive for the purposes of this Division is—

- (a) in the case of a public service body Head—the Premier;
- (b) in the case of any other executive employed under this Part—the appropriate public service body Head;
- (c) in the case of an executive referred to in section 23(1)(b) or (c)—the person or body specified in an Order made under section 105(2)(b) as having the functions of a public service body Head in relation to the relevant declared authority;
- (d) in the case of any other executive—the person or body declared by the Governor in Council in an Order made under section 23(1)(d) to be the employer of the executive.

25 Executive employment governed by contract

- (1) Subject to this Act, the employment of an executive shall be governed by a contract of employment between the executive and his or her employer.
- (2) A contract must be in writing and be signed by or on behalf of the employer and the executive.
- (3) A contract must specify the date on which it expires which must not be more than 5 years after the date on which it came into force.

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- (4) Performance criteria contained in a contract of employment relating to an Assistant Commissioner of Police must relate to management matters only.
 - (5) A contract of employment may be varied at any time by a further contract between the parties but its term may not be increased beyond 5 years.
 - (6) If, at the time of entering into a contract of employment, an executive was not employed in the employment or appointed to the office to which the contract relates, then the contract constitutes his or her instrument of employment or appointment for the purposes of this and any other Act.
 - (7) If, at the time of entering into a contract of employment, an executive was employed in the employment or appointed to the office to which the contract relates, then the contract constitutes a new instrument of employment or appointment, and replaces any earlier instrument of employment or appointment, for the purposes of this and any other Act.

26 Contracts and existing employees

- (1) A person who becomes eligible to be an executive because of the employment in which he or she is then employed or the office which he or she then holds may elect to enter into a contract of employment relating to that employment or office at any time up until the end of 3 months after the date on which he or she became so eligible.
- (2) A person who makes an election in accordance with subsection (1) is entitled to be offered a contract of employment.

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- (3) The employment or appointment of a person referred to in subsection (1) who chooses not to elect to enter into a contract of employment is not thereby terminated and he or she continues in that employment or office on the same terms and conditions as before and with the benefit of all accrued or accruing rights but ceases to be entitled to any performance-related incentive payments.
 - (4) This section does not apply to a person to whom it otherwise would apply because of the making of an Order under section 23(1)(d) if that Order specifies that it is not to apply.

27 Right of return

- (1) An executive who—
 - (a) immediately before his or her first employment as an executive (whether before or after the commencement of this section) was a non-executive employee; and
 - (b) since that first employment has been continuously employed as an executive—is entitled, on ceasing to be employed as an executive for any reason on the initiative of the employer (other than where his or her employment was terminated for misconduct within the meaning of section 22) or because of the expiry of his or her contract of employment, to be employed as a non-executive employee in the public service body in which he or she was last employed as an executive.
 - (2) The employment to which a former executive is entitled under this section is employment in the highest classification of non-executive role—
 - (a) at the mid-point of that classification; or
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- (b) if employment at that mid-point would result in the former executive being employed at a higher total remuneration level than that at which he or she was last employed as an executive, at the highest point of that classification that would not have that result.

S. 27(2)(b)
amended by
No. 80/2006
s. 9(1).

Note

Section 16(2) sets out how this section applies to an office covered by section 16(1). The body to which an executive employed in such an office may have a right of return under this section is that office.

- (3) The regulations may specify how the total remuneration level at which a former executive was last employed as an executive is to be determined for the purposes of this section.
- (4) A former executive may, whether in consideration of the making of any payment to him or her or otherwise, waive in writing his or her entitlement under this section to employment in a public service body.
- (5) A former executive who elects to exercise his or her entitlement under this section to employment in a public service body is not entitled to any payment in lieu of notice on the termination of his or her contract of employment as an executive, despite anything to the contrary in that contract.

S. 27(3)
inserted by
No. 80/2006
s. 9(2).

S. 27(4)
inserted by
No. 80/2006
s. 9(2).

S. 27(5)
inserted by
No. 80/2006
s. 9(2).

Division 6—Transfer of employees

28 Transfer directed by public service body Head

- (1) If the appropriate public service body Head considers it to be in the interests of the public sector to do so, he or she may, with the approval of the Head of the other public service body or of the public entity concerned, transfer an employee to duties in another public service body or in a

public entity on terms and conditions of employment that are no less favourable overall.

- (2) This section does not apply to the holder of a prerogative office unless the Governor in Council, by Order published in the Government Gazette, declares that it applies.

29 Transfer of public service body Head to other duties

- (1) If the Premier considers it to be in the interests of the public sector to do so, he or she may, after consulting the State Services Authority, transfer a public service body Head to other duties in that public service body or another public service body or in a public entity on terms and conditions of employment that are no less favourable overall.
- (2) This section does not apply to the Official Secretary unless the Governor in Council, by Order published in the Government Gazette, declares that it applies.

30 Machinery of government transfers

- (1) On the transfer of a function from one public service body to another or to a public entity, whether or not the first public service body ceases to exist, the Premier may, in writing, declare that any employee necessary to carry out, or support the carrying out of, that function is transferred to duties in the second public service body or in the public entity concerned on terms and conditions of employment that are no less favourable overall.
- (2) On the making of a declaration under subsection (1), the transfer is deemed to take place.
- (3) A declaration under subsection (1) may be made in respect of an individual employee or a group of employees.

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- (4) This section does not apply to the holder of a prerogative office unless the Governor in Council, by Order published in the Government Gazette, declares that it applies.

31 Transfer, etc. does not affect employment continuity

A transfer or other movement of an employee to other duties in a public service body or to duties in another public service body, whether in accordance with this Division or otherwise and including a transfer or movement at the initiative of the employee, does not constitute a resignation or termination of employment and the post-transfer or other movement service is to be regarded as continuous with the pre-transfer or other movement service.

Division 7—Restriction on employees doing other work

32 Restriction on employees doing other work

- (1) Except with the express permission of the Premier in the case of a public service body Head or of the appropriate public service body Head in the case of any other employee, a full-time employee must not—
- (a) engage in any other paid employment; or
 - (b) carry on any business, profession or trade.
- (2) A part-time employee must not engage in any other paid employment or carry on any business, profession or trade that, in the opinion of the Premier in the case of a public service body Head or of the appropriate public service body Head in the case of any other employee, conflicts with the proper performance of the employee's duties.

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- (3) Permission given to an employee under this section may be withdrawn by notice in writing given to the employee by the Premier or the appropriate public service body Head (as the case requires).
- (4) Nothing in this section prevents an employee from—
- (a) holding shares, or an interest in shares, in a company (within the meaning of the Corporations Act); or
 - (b) becoming a member of an incorporated association within the meaning of the **Associations Incorporation Act 1981**.

Division 8—Termination

33 Termination of employment (non-executives)

- (1) The appropriate public service body Head may terminate the employment of a non-executive employee—
- (a) on the ground of redundancy; or
 - (b) if the employee refuses a transfer to other duties under Division 6; or
 - (c) if the employee is found guilty of a criminal offence punishable by imprisonment, including an offence committed before, but not dealt with until after, the employee became an employee; or
 - (d) if the employee is guilty of serious misconduct; or
 - (e) if the public service body Head is satisfied that the employee is inefficient or incompetent in the discharge of his or her duties; or
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- (f) if the public service body Head is satisfied that the employee has abandoned his or her employment; or
 - (g) if the public service body Head is satisfied that the employee has, in connection with his or her application for employment, given false or misleading information; or
 - (h) for any other reason consistent with the terms and conditions of his or her employment.
- (2) A power of a public service body Head referred to in subsection (1) must be exercised as set out in section 20(3).

34 Termination of employment (executives)

- (1) The appropriate public service body Head or, if the executive is a public service body Head, the Premier, may terminate the employment of an executive for any reason consistent with the terms and conditions of his or her contract of employment.
- (2) Without affecting any other means of terminating the contract of a public service body Head, the Governor in Council may at any time remove a public service body Head from office and, on that removal, his or her contract of employment is terminated.
- (3) A power of a public service body Head referred to in subsection (1) must be exercised as set out in section 20(3).
- (4) Despite anything to the contrary in this or any other Act—
 - (a) if the holder of a statutory or prerogative office which is a declared authority is removed or retires from that office, his or her

contract of employment is thereby terminated; and

- (b) if the contract of employment of the holder of a statutory office which is a declared authority is terminated under this Act, he or she is deemed, for the purpose of this or any other Act, to have been removed from that office.

- (5) Subsection (1) does not apply to the Official Secretary.

35 No compensation on termination of employment, etc.

- (1) An employee is not entitled to any compensation as a result of—
 - (a) the termination of his or her employment; or
 - (b) his or her remuneration being reduced.
- (2) Subsection (1) is subject to any relevant—
 - (a) award or agreement under, or continued in force by, a law of the Commonwealth;
 - (b) contract of employment;
- (ba) order made by the Public Sector Standards Commissioner under Subdivision 5A of Division 2 of Part 4;
- (c) directions that may be issued by the Premier.

S. 35(2)(ba)
inserted by
No. 80/2006
s. 4(3).

Division 9—General

36 Operation of Part

- (1) This Part, to the extent that it relates to persons who are executives for the purposes of Division 5, prevails over any inconsistent provision of any other Act or law (irrespective of when enacted or made) and over any inconsistent terms and conditions applying to the executive's

employment, whether under a contract of employment or otherwise.

- (2) A provision of this Part applies to an executive referred to in subsection (1) appointed under an Act (irrespective of when enacted) even though that Act excludes the application of this Act, unless it expressly excludes the application of that provision.
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PART 4—STATE SERVICES AUTHORITY

Division 1—Establishment, constitution, appointments and meetings

37 Establishment and constitution of State Services Authority

- (1) The State Services Authority is established.
- (2) The Authority consists of—
 - (a) a member appointed as the chairperson;
 - (b) a member appointed as the Public Sector Standards Commissioner;
 - (c) as many other members as the Premier considers necessary to enable the Authority to exercise its functions.
- (3) Members are to be appointed by the Governor in Council on the recommendation of the Premier.
- (4) A person is qualified for appointment as a member if the Premier is satisfied that he or she has—
 - (a) appropriate knowledge of, or experience in, one or more of the fields of government, law, administration, human resources, public policy or senior management; and
 - (b) the ability to advise on, and oversee the carrying out of, major projects or investigations relevant to the functions of the Authority.
- (5) A member cannot be appointed both as the chairperson and as the Public Sector Standards Commissioner.

38 Terms and conditions of appointment of members

- (1) A member of the Authority—
- (a) holds office for the term, not exceeding 5 years and, in the case of the Public Sector Standards Commissioner, not less than 3 years, that is specified in his or her instrument of appointment; and
 - (b) may be appointed either on a full-time basis or on a part-time basis; and
 - (c) is appointed on the terms and conditions specified in his or her instrument of appointment, including terms and conditions as to remuneration; and
 - (d) is eligible for re-appointment.
- (2) Except with the express permission of the Premier, a member of the Authority employed on a full-time basis must not—
- (a) engage in any other paid employment; or
 - (b) carry on any business, profession or trade.
- (3) A member of the Authority employed on a part-time basis must not engage in paid employment or carry on a business, profession or trade that, in the Premier's opinion, conflicts with the proper performance of the member's duties.
- (4) This Act (other than Part 3) applies to a member of the Authority in respect of the office of member.

**S. 38(4)
substituted by
No. 80/2006
s. 10.**

39 Removal or resignation from office

- (1) The office of a member of the Authority becomes vacant if he or she—
 - (a) nominates for election to either House of the Parliament of Victoria or of the Commonwealth or of any other State or a Territory; or
 - (b) resigns from office under subsection (2); or
 - (c) in the case of a member other than the Public Sector Standards Commissioner, is removed from office under subsection (3); or
 - (d) in the case of the Public Sector Standards Commissioner, is removed from office under subsection (9).
- (2) A member may resign from office by notice in writing signed by the member and delivered to the Premier.
- (3) The Governor in Council, on the recommendation of the Premier, may remove a member of the Authority (other than the Public Sector Standards Commissioner) from office—
 - (a) if he or she becomes an insolvent under administration; or
 - (b) if he or she is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (c) if he or she becomes, in the opinion of the Premier, incapable of carrying out the duties of the office; or
 - (d) on any other ground which, in the opinion of the Premier, makes him or her unfit to hold the office.

S. 39(3)(a)
amended by
No. 4/2008
s. 32(Sch.
item 28).

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- (4) The Premier must recommend to the Governor in Council the removal of a member under subsection (3) in the circumstances described in paragraph (a), (b) or (c) of that subsection.
- (5) The Governor in Council, on the recommendation of the Premier, may suspend the Public Sector Standards Commissioner from office—
- (a) if he or she becomes an insolvent under administration; or
 - (b) if he or she is found guilty of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (c) if he or she becomes, in the opinion of the Premier, incapable of carrying out the duties of the office; or
 - (d) on any other ground which, in the opinion of the Premier, makes him or her unfit to hold the office.
- (6) The Premier must recommend to the Governor in Council the suspension of the Public Sector Standards Commissioner under subsection (5) in the circumstances described in paragraph (a), (b) or (c) of that subsection.
- (7) The Premier must cause to be laid before both Houses of Parliament a full statement of the grounds for the suspension.
- (8) The statement must be laid within 7 days after the suspension if Parliament is then sitting or, if Parliament is not then sitting, then within 7 days after its next meeting.

S. 39(5)(a)
amended by
No. 4/2008
s. 32(Sch.
item 28).

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- (9) The Governor in Council must remove the Public Sector Standards Commissioner from office if each House of Parliament declares by resolution, within 7 sitting days after the laying before it of the statement, that he or she ought to be so removed.
 - (10) The Governor in Council must remove the suspension and restore the Public Sector Standards Commissioner to office unless each House makes a declaration of the kind, and within the time, specified in subsection (9).
 - (11) A member of the Authority can only be removed from office in accordance with this section.

40 Role of chairperson

- (1) The role of the chairperson is to manage the Authority and ensure the efficient exercise of its functions.
- (2) The chairperson also has the role of approving reports to be submitted by the Authority (not including reports to be submitted by the Public Sector Standards Commissioner) under this Act.

41 Acting chairperson

- (1) The Premier may appoint another member of the Authority (other than the Public Sector Standards Commissioner) or the chief executive officer of the Authority to act as chairperson for a period not exceeding 3 months—
 - (a) during a vacancy in the office of chairperson;
or
 - (b) while the chairperson is absent from Victoria or is, for any other reason, unable to perform the duties of the office of chairperson.
 - (2) An acting chairperson has and may exercise all the powers, and must perform all the duties, of the chairperson.
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42 Chief executive officer

- (1) An office of chief executive officer of the Authority is established.
- (2) The Governor in Council may appoint the chairperson as chief executive officer.
- (3) If the chairperson is not the chief executive officer, the chairperson, on behalf of the Crown, must employ a person (other than the Public Sector Standards Commissioner) as chief executive officer under Part 3.

43 Meetings

- (1) The chairperson or, in his or her absence, the acting chairperson must preside at a meeting of the Authority.
- (2) The quorum for a meeting of the Authority is a majority of the members in office for the time being.
- (3) A question arising at a meeting of the Authority is determined by a majority of the votes of the members present and voting on the question.
- (4) The person presiding has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
- (5) The Authority can only decide to submit a report under this Act if the report is approved by the chairperson.
- (6) Subject to this Act, the Authority may regulate its own procedure.

44 Validity of acts or decisions

- (1) An act or decision of the Authority is not invalid merely because of—
 - (a) a defect or irregularity in, or in connection with, the appointment of a member; or
 - (b) a vacancy in the membership of the Authority.
- (2) An act or decision of the Public Sector Standards Commissioner is not invalid merely because of a defect or irregularity in, or in connection with, the appointment of the Commissioner.
- (3) Anything done by or in relation to a person purporting to act as chairperson is not invalid merely because—
 - (a) there was a defect or irregularity in, or in connection with, the acting appointment; or
 - (b) the occasion for the person to act had not arisen or had ceased.

S. 44A
inserted by
No. 80/2006
s. 11.

44A Application of Freedom of Information Act 1982

The **Freedom of Information Act 1982** applies to, and in respect of, the Authority as if it were a department within the meaning of that Act and as if the chief executive officer of the Authority were the principal officer of the Authority for the purposes of that Act.

S. 44B
inserted by
No. 80/2006
s. 12.

44B Application of Part 7A of Financial Management Act 1994

Part 7A of the **Financial Management Act 1994** applies to, and in respect of, the Authority as if it were a department within the meaning of that Act and as if the chief executive officer of the Authority were the accountable officer of the Authority for the purposes of that Part.

Division 2—Functions

Subdivision 1—General

45 Functions and powers of the Authority

(1) The Authority has the following functions—

- (a) to identify opportunities to improve the delivery and integration of government services and report on service delivery outcomes and standards (**role 1—see Subdivision 2**);
- (b) to promote high standards of integrity and conduct in the public sector (**role 2—see Subdivision 3**);
- (c) to strengthen the professionalism and adaptability of the public sector (**role 3—see Subdivision 4**);
- (d) to promote high standards of governance, accountability and performance for public entities (**role 4—see Subdivision 5**);
- (da) to provide relief to certain public sector employees against a harsh, unjust or unreasonable termination of employment (**role 5—see Subdivision 5A**);
- (e) to establish and maintain a register of instruments issued under this Act (**role 6—see Subdivision 6**);
- (f) any other function given to it by the Premier relating to—
 - (i) ensuring the overall effectiveness and efficiency of the public sector; or
 - (ii) reviewing management effectiveness and efficiency in the public sector; or

S. 45(1)(da)
inserted by
No. 80/2006
s. 4(4)(a).

S. 45(1)(e)
amended by
No. 80/2006
s. 4(4)(b).

(iii) improving public sector leadership and management.

(2) Without limiting any other provision made by or under this Act, the Authority has power to do all things necessary or convenient to be done for, or in connection with, exercising its functions.

46 How are the Authority's functions to be exercised?

- (1) The functions of the Authority (other than any function that this Act requires the Public Sector Standards Commissioner to exercise independently) are to be exercised by the members in a collegiate manner with formal decisions made at a meeting of the Authority.
- (2) Nothing in subsection (1) prevents the chairperson allocating a matter (other than a matter relating to a function that this Act requires the Public Sector Standards Commissioner to exercise independently) to a particular member or group of members for consideration and report back to the Authority for its consideration and decision.
- (3) A report may only be submitted by the Authority under this Act (other than a report by the Public Sector Standards Commissioner in performing role 2 of the Authority) if the report is approved by the chairperson and the Authority decides to submit it.

47 Prohibition on disclosure of certain information

- (1) A person must not disclose, except in the course of duty to another person exercising functions under this Act, any information which has come to his or her knowledge by reason directly or indirectly of conducting a systems review, special inquiry or special review under Subdivision 2 or a review of actions under Subdivision 3 if the person from whom that information was obtained could not, but for the conduct of the review or

inquiry, lawfully have disclosed that information to that person.

- (2) Despite subsection (1) or any other law to the contrary, the Authority or the Public Sector Standards Commissioner may include in a report under section 74 any information covered by subsection (1) if the Authority or the Public Sector Standards Commissioner (as the case requires) considers that—
 - (a) the information is relevant to the subject-matter of the report; and
 - (b) the inclusion of the information in the report is in the public interest.

48 Delegation

- (1) Subject to subsection (2), the members of the Authority, or any particular member or group of members, may, by instrument, delegate to a member or a person or class of person employed under Part 3 or to any other person whatsoever any function of the Authority, or of the particular member or group of members, under this Act or the **Parliamentary Administration Act 2005**, other than this power of delegation.
- (2) Only the Public Sector Standards Commissioner may delegate role 2 or role 5 of the Authority or any function connected with the performance of role 2 or role 5.

S. 48(1)
amended by
No. 80/2006
s. 13.

S. 48(2)
amended by
No. 80/2006
s. 4(5).

Subdivision 2—Role 1

49 Statement of role 1

Role 1 of the Authority is to identify opportunities to improve the delivery and integration of government services and report on service delivery outcomes and standards.

50 Systems reviews

- (1) The Authority must, if required to do so by the Premier, and may, if requested to do so by any other Minister or by a public service body Head, conduct a review of management systems, structures or processes in a public service body or public entity or of the functional relationships between 2 or more public service bodies or public entities or classes of public service body or public entity.
- (2) The Authority cannot conduct a review of its own motion.
- (3) On conducting a review the Authority may—
 - (a) monitor the performance of the public service body or public entity against its objectives and recommend measures to improve its effectiveness, efficiency or accountability;
 - (b) recommend measures to enhance the delivery or integration of government services;
 - (c) advise on best practice in service delivery.
- (4) A request for a review may only be made under subsection (1) by a Minister (other than the Premier) in relation to a public service body or public entity if he or she is the public service body Minister or is responsible for the public entity, as the case requires.
- (5) A request for a review may only be made under subsection (1) by a public service body Head in relation to a public service body of which he or she is the Head.

- (6) A public service body or public entity that is the subject of a review, and any person employed in or by that body or entity, must take all reasonable steps to assist the Authority to conduct the review.

51 Report of systems review

The Authority must prepare a report on any review conducted by it in response to a requirement or request made under section 50, including any recommendations or advice, and provide a copy of it to the person who required or requested the review.

52 Special inquiries

- (1) The Premier may direct the Authority to conduct a special inquiry into any matter relating to—
- (a) a public service body; or
 - (b) a public entity; or
 - (c) a special body.
- (2) A special inquiry may be conducted in relation to a body even if a provision of an Act other than this Act has the effect that the body or a member of the body or of the governing body (by whatever name called) of the body is not subject to this Act or to any part of this Act.

S. 52(2)
amended by
No. 80/2006
s. 24(2).

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S. 52(2)(a)-(c)
repealed by
No. 80/2006
s. 24(2).

53 Powers on special inquiries

- (1) A person conducting a special inquiry may, in connection with the inquiry, enter any premises of a body that is the subject of the inquiry.

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- (2) Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to a person conducting a special inquiry as if he or she were a Board or the Chairman of a Board appointed by the Governor in Council.
 - (3) A person is not excused from producing any document or answering any question at a special inquiry on the ground that the production of the document or the answering of the question is prohibited by or under any other Act.
 - (4) The production of a document or the answering of a question, when required at a special inquiry, does not constitute a breach of a provision made by or under any Act prohibiting the disclosure of information of a kind contained in that document or answer.
 - (5) Nothing in this section takes away from any privilege or immunity existing by custom or convention and relating to the production of documents of previous Governments.

54 Procedure and evidence at a special inquiry

- (1) If the person conducting a special inquiry agrees, a person or body may be represented at the inquiry by a legal practitioner or other agent.
- (2) The person conducting a special inquiry is not bound by the rules of evidence and may be informed on any matter in issue at the inquiry in any manner that he or she considers appropriate.
- (3) The person conducting a special inquiry may give directions as to the procedure to be followed at or in connection with the inquiry.

55 Reports of special inquiries

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

56 Special reviews

- (1) The Premier may direct the Authority to conduct a special review into any matter relating to—
 - (a) a public service body; or
 - (b) a public entity.
- (2) A special review may be conducted in relation to a public entity even if a provision of an Act other than this Act has the effect that the entity or a member of the entity or of the governing body (by whatever name called) of the entity is not subject to this Act or to any part of this Act.

S. 56(2)
amended by
No. 80/2006
s. 24(3).

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S. 56(2)(a)–(c)
repealed by
No. 80/2006
s. 24(3).

57 Powers on special reviews

- (1) A person conducting a special review may, in connection with the review, enter the premises of a body that is the subject of the review.
- (2) Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to a person conducting a special review as if he or she were a Board or the Chairman of a Board appointed by the Governor in Council.
- (3) A person is not excused from producing any document or answering any question at a special review on the ground that the production of the document or the answering of the question is prohibited by or under any other Act.
- (4) The production of a document or the answering of a question, when required at a special review, does not constitute a breach of a provision made by or under any Act prohibiting the disclosure of information of a kind contained in that document or answer.
- (5) Nothing in this section takes away from any privilege or immunity existing by custom or convention and relating to the production of documents of previous Governments.

58 Procedure and evidence at a special review

- (1) If the person conducting a special review agrees, a person or body may be represented at the review by a legal practitioner or other agent.
 - (2) The person conducting a special review is not bound by the rules of evidence and may be informed on any matter in issue on the review in any manner that he or she considers appropriate.
 - (3) The person conducting a special review may give directions as to the procedure to be followed at or in connection with the review.
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59 Reports of special reviews

- (1) The Authority must—
 - (a) within the period required by the Premier, prepare a report on the conduct and findings, and any recommendations, of the review; and
 - (b) immediately after preparing the report, provide a copy to the Premier and the Minister responsible for any body that is the subject of the review.
- (2) The Minister responsible for a body that is the subject of the review must cause a copy of the report of a special review, together with information as to any action taken or proposed to be taken in relation to the subject-matter of the report, to be given to the Premier as soon as practicable after that Minister was provided with a copy of the report.

60 Bodies with judicial or quasi-judicial functions

- (1) Nothing in this Subdivision empowers the Authority to conduct, or a Minister to direct or request the conduct of, a special inquiry or special review into any exercise by a body of a function that is of a judicial or quasi-judicial nature.
- (2) The conduct of a systems review of, or a special inquiry or special review into any matter relating to, a body that exercises functions that are of a judicial or quasi-judicial nature must not in any way impede the exercise by the body of those functions.

Subdivision 3—Role 2

61 Statement of role 2

Role 2 of the Authority is to promote high standards of integrity and conduct in the public sector.

62 Role 2 to be performed by PSSC

- (1) Subject to subsection (2), role 2 of the Authority is to be performed by the Public Sector Standards Commissioner independently.
- (2) The Public Sector Standards Commissioner must consult in good faith with the other members of the Authority in relation to the exercise of his or her functions, other than that relating to the review of actions under section 64.

63 Codes of conduct

- (1) The Public Sector Standards Commissioner may prepare and issue codes of conduct based on the public sector values.
- (2) The purpose of a code of conduct is to promote adherence to the public sector values.
- (3) A code of conduct is binding on any public official or class of public official to whom it applies.
- (4) The Public Sector Standards Commissioner may determine to whom a code of conduct applies.
- (5) A contravention of a code of conduct by a public official who is bound by the code is capable of constituting misconduct.
- (6) The Public Sector Standards Commissioner may amend and re-issue a code of conduct or issue a new code of conduct in substitution for a previously issued one.

64 Review of actions

- (1) Subject to this section, an employee is entitled to have an action taken within a public service body that relates to his or her employment reviewed in accordance with the regulations and any standards issued under subsection (5).

Note

Public service bodies include offices specified in section 16(1)—see section 16(2).

- (2) Unless the regulations otherwise provide, an employee is only entitled to have a review of a proposed appointment or promotion on the ground of an error of law or a significant deficiency in the selection process or the process on an initial review.
- (3) Regulations made for the purposes of this section may—
- (a) prescribe exceptions to the entitlement to a review in circumstances where—
 - (i) the matter is frivolous, vexatious or lacking in substance; or
 - (ii) the applicant does not have sufficient personal interest; or
 - (iii) the applicant has not sought an initial review within the public service body to which he or she belongs; or
 - (iv) the application is not made within a specified period; or
 - (v) the matter is the subject of a complaint under the **Equal Opportunity Act 1995** or a proceeding in any court or tribunal initiated by the applicant; or
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- (vi) the matter could more appropriately be the subject of a complaint under the **Equal Opportunity Act 1995** or a proceeding in any court or tribunal;
- (b) provide for procedures for a review, including empowering the appointment of a person or body to conduct a review and specifying circumstances in which the applicant or any other party to a review may be represented by a legal practitioner or other agent;
- (c) provide for an initial review to be conducted within the public service body to which the employee belongs;
- (d) provide for the powers available to the person or body conducting an initial review within the public service body to which the employee belongs;
- (e) provide for an application for a review to be made directly to the Public Sector Standards Commissioner in specified circumstances;
- (f) provide for an application for a review to be referred to the Public Sector Standards Commissioner in specified circumstances on completion of an initial review within the public service body to which the employee belongs;
- (g) provide for the powers available to the Public Sector Standards Commissioner on conducting a review, including power to require the appropriate public service body Head to provide him or her with information or documents and power to interview any employee in the body.
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- (4) Regulations made for the purposes of this section—
- (a) must not require the Public Sector Standards Commissioner to hold a formal hearing on a review;
 - (b) must ensure that the rules of natural justice are adhered to on a review.
- (5) The Public Sector Standards Commissioner may establish and issue standards concerning procedure for reviews, including minimum standards with which public sector bodies must comply in establishing review processes.
- (6) A standard issued under subsection (5) must not be inconsistent with this Act or the regulations and, to the extent that it is, the standard is of no effect.

65 Recommendations following review

- (1) A person or body (including the Public Sector Standards Commissioner) that has conducted a review under section 64 may make recommendations in a report on the review but does not have power to make any binding decision as a result of the review.
- (2) Without limiting subsection (1), recommendations under that subsection may include a recommendation that—
 - (a) a decision be reconsidered; or
 - (b) processes within the public service body be changed.
- (3) If the appropriate public service body Head does not adopt, or decide to adopt, a recommendation made in a report on a review within 14 days after receiving the report, he or she must, within 7 days after the end of that period, provide a written statement of the reasons for not adopting the

recommendation to the Public Sector Standards Commissioner, the applicant for the review and any other person affected by the recommendation.

66 Promotion of public sector values, principles etc.

- (1) The Public Sector Standards Commissioner must promote the public sector values, the public sector employment principles, codes of conduct and standards.
- (2) The Public Sector Standards Commissioner may establish and issue standards concerning the application of the public sector employment principles.
- (3) Standards issued under subsection (2) are binding on the public sector bodies to which they apply and on persons employed in those bodies.
- (4) Public sector body Heads must ensure that persons employed in the body are informed about the application of the public sector employment principles and standards issued under subsection (2).
- (5) The Public Sector Standards Commissioner may require public service body Heads and public entity Heads to provide him or her with information relating to the application of—
 - (a) the public sector values; and
 - (b) the public sector employment principles; and
 - (c) codes of conduct; and
 - (d) standards—at such times, and in such manner, as he or she may specify.

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- (6) The Public Sector Standards Commissioner may require special body Heads to provide him or her with information relating to the application of—
- (a) values consistent (as required by section 7(2)) with the public sector values; and
 - (b) the public sector employment principles—
- at such times, and in such manner, as he or she may specify.

Subdivision 4—Role 3

67 Statement of role 3

Role 3 of the Authority is to strengthen the professionalism and adaptability of the public sector.

68 Related functions

The Authority has the following functions related to role 3—

- (a) to promote careers in public administration within the public sector and to the general community;
 - (b) to promote the efficient utilisation of all staff in public employment in Victoria by identifying workforce and career arrangements that impede service delivery;
 - (c) to provide leadership on workforce management and professional development in the public sector;
 - (d) to develop, monitor and report on workforce development, human resource and management policies for the public sector;
 - (e) to make recommendations to the Premier on the professional development and remuneration of executives;
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- (f) to undertake research and investigation, and establish and maintain appropriate databases, relevant to workforce development in the public sector;
 - (g) to nurture appropriate professional behaviour for the public sector workforce;
 - (h) to monitor the effectiveness of redeployment processes within the public service.

Subdivision 5—Role 4

69 Statement of role 4

Role 4 of the Authority is to promote high standards of governance, accountability and performance for public entities.

70 How role 4 is to be performed

The Authority must perform role 4 by—

- (a) providing advice to the Premier on appropriate structures and governance arrangements for public entities;
- (b) conducting reviews of the continuing relevance and effectiveness of classes of public entities;
- (c) at the request of the Premier, providing advice on governance or performance issues affecting a particular public entity or class of public entity;
- (d) at the request of the Minister responsible for a particular public entity or class of public entity, providing advice on governance or performance issues affecting the public entity or class of public entity.

Subdivision 5A—Role 5

Pt 4 Div. 2
Subdiv. 5A
(Heading and
ss 70A–70Z)
inserted by
No. 80/2006
s. 3.

70A Statement of role 5

Role 5 of the Authority is to enable certain public sector employees and Parliamentary officers whose employment is terminated to apply for relief in respect of that termination on the ground that it was harsh, unjust or unreasonable.

S. 70A
inserted by
No. 80/2006
s. 3.

Note

This Subdivision deals with applications by relevant public sector employees. Division 7 of Part 3 of the **Parliamentary Administration Act 2005** deals with applications by relevant Parliamentary officers.

70B Role 5 to be performed by PSSC

Role 5 of the Authority is to be performed by the Public Sector Standards Commissioner independently.

S. 70B
inserted by
No. 80/2006
s. 3.

70C Definitions

(1) In this Subdivision—

Commonwealth Act means the Workplace Relations Act 1996 of the Commonwealth;

employer means an entity that employs, or usually employs, a public sector employee in the capacity of public sector employee;

operational reasons means reasons of an economic, technological, structural or similar nature relating to an employer's undertaking, establishment, service or business, or to a part of an employer's undertaking, establishment, service or business;

S. 70C
inserted by
No. 80/2006
s. 3.

relevant public sector employee means a person who, immediately before the termination of his or her employment, was a public sector employee and who—

- (a) cannot apply under section 643 of the Commonwealth Act to the Australian Industrial Relations Commission on the ground that the termination was harsh, unjust or unreasonable, or on grounds that include that ground, because his or her employer employed 100 employees or fewer at the relevant time; and
 - (b) is not excluded by or under section 70D from the operation of this Subdivision.
- (2) An expression used in this Subdivision and in Division 4 of Part 12 of the Commonwealth Act has the same meaning in this Subdivision as it has in that Division, unless the contrary intention appears.

S. 70D
inserted by
No. 80/2006
s. 3.

70D Exclusions

- (1) The following kinds of public sector employees are excluded from the operation of this Subdivision—
 - (a) a public sector employee who, by force of section 638(1) of the Commonwealth Act, is excluded from the operation of Subdivision B of Division 4 of Part 12 of that Act;
 - (b) a public sector employee who is a member of a class of public sector employee excluded from the operation of this Subdivision by regulations made under subsection (2).
- (2) The regulations may exclude from the operation of this Subdivision a specified class of public sector employee.

70E Application to PSSC to deal with termination

S. 70E
inserted by
No. 80/2006
s. 3.

- (1) Subject to subsections (2) and (4), a relevant public sector employee whose employment has been terminated by the employer may apply to the Public Sector Standards Commissioner for relief in respect of the termination of that employment on the ground that the termination was harsh, unjust or unreasonable.
 - (2) An application must not be made under subsection (1) unless the relevant public sector employee concerned had completed the qualifying period of employment with the employer at the earlier of the following times—
 - (a) the time when the employer gave the employee the notice of termination;
 - (b) the time when the employer terminated the employee's employment.
 - (3) For the purposes of subsection (2), the *qualifying period of employment* is—
 - (a) 6 months; or
 - (b) a shorter period, or no period, determined by written agreement between the public sector employee and employer before the commencement of the employment; or
 - (c) a longer period determined by written agreement between the public sector employee and employer before the commencement of the employment, being a reasonable period having regard to the nature and circumstances of the employment.
 - (4) An application must not be made under subsection (1) if the public sector employee's employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons.
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- (5) An application under subsection (1) must be lodged within 21 days after the day on which the termination took effect, or within such period as the Public Sector Standards Commissioner allows on an application made during or after those 21 days.
- (6) An application under subsection (1) may be discontinued by the applicant, whether or not the employer and the relevant public sector employee have agreed to settle the matter. Regulations may prescribe the manner in which an application may be discontinued and, if so, the application must be discontinued in accordance with the regulations.

S. 70F
inserted by
No. 80/2006
s. 3.

70F Dismissal of application for want of jurisdiction

- (1) A respondent may apply to the Public Sector Standards Commissioner for the dismissal of an application under section 70E(1) on the ground that the application is outside the jurisdiction of the Public Sector Standards Commissioner.
- (2) An application may be made under subsection (1) at any time, including a time before the Public Sector Standards Commissioner has begun dealing with the application.
- (3) If the Public Sector Standards Commissioner is satisfied that an application under section 70E(1) is outside his or her jurisdiction—
 - (a) because the employee is excluded from the operation of this Subdivision by or under section 70D; or
 - (b) because of the operation of section 70E(2) (which relates to qualifying periods)—the Public Sector Standards Commissioner must make an order dismissing the application.

(4) The Public Sector Standards Commissioner may make an order under subsection (3) even if no application has been made under subsection (1) if it appears to him or her, on the face of all the materials before him or her, that the application under section 70E(1) is outside his or her jurisdiction for a reason mentioned in subsection (3)(a) or (b).

(5) If—

(a) a respondent has applied under subsection (1); and

(b) the Public Sector Standards Commissioner is not satisfied as mentioned in subsection (3)(a) or (b) in relation to the application—

the Public Sector Standards Commissioner must make an order refusing the application for dismissal.

(6) The Public Sector Standards Commissioner is not required to hold a hearing in relation to the making of an order under subsection (3) or (5).

70G Applications that are frivolous, vexatious or lacking in substance

S. 70G
inserted by
No. 80/2006
s. 3.

(1) A respondent may apply to the Public Sector Standards Commissioner for the dismissal of an application under section 70E(1) on the ground that the application is frivolous, vexatious or lacking in substance.

(2) If the Public Sector Standards Commissioner is satisfied that an application under section 70E(1) is frivolous, vexatious or lacking in substance, he or she must make an order dismissing the application.

s. 70H

- (3) If—
- (a) a respondent has applied under subsection (1); and
 - (b) the Public Sector Standards Commissioner is not satisfied that the application under section 70E(1) is frivolous, vexatious or lacking in substance—
- the Public Sector Standards Commissioner must make an order refusing the application for dismissal.
- (4) The Public Sector Standards Commissioner is not required to hold a hearing in relation to the making of an order under subsection (2) or (3).

S. 70H
inserted by
No. 80/2006
s. 3.

70H Extension of time applications may be decided without a hearing

If a public sector employee whose employment has been terminated by an employer makes an application (the *extension of time application*) under section 70E(5) requesting the Public Sector Standards Commissioner to allow an application to be lodged under section 70E(1) after the period of 21 days after the termination took effect, the Public Sector Standards Commissioner is not required to hold a hearing in relation to the extension of time application.

S. 70I
inserted by
No. 80/2006
s. 3.

70I Dismissal of application relating to termination for operational reasons

- (1) If—
- (a) an application is made under section 70E(1); and
 - (b) either—
 - (i) the respondent has applied for the dismissal of the application on the ground that the application is outside

the jurisdiction of the Public Sector Standards Commissioner because the public sector employee's employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons; or

- (ii) it appears to the Public Sector Standards Commissioner, on the face of all the materials before him or her, that the public sector employee's employment may have been terminated for genuine operational reasons or for reasons that include genuine operational reasons—

the Public Sector Standards Commissioner must, subject to section 70F(6), 70G(4) or 70H (as the case requires), hold a hearing to deal with the operational reasons issue.

- (2) If, as a result of the hearing, the Public Sector Standards Commissioner is satisfied that the operational reasons relied on by the respondent were genuine, the Public Sector Standards Commissioner must make an order dismissing the application.
- (3) A finding by the Public Sector Standards Commissioner that he or she is not satisfied that the operational reasons relied on by the respondent were genuine is final and binding between the parties in any proceedings before the Public Sector Standards Commissioner.
- (4) To avoid doubt, this section does not require the Public Sector Standards Commissioner to hold a hearing in relation to an application that has been dismissed under section 70F(3) or 70G(2).

S. 70J
inserted by
No. 80/2006
s. 3.

70J Conciliation

- (1) When an application is lodged with the Public Sector Standards Commissioner, the Public Sector Standards Commissioner must attempt to settle the matter to which the application relates by conciliation.
- (2) If the Public Sector Standards Commissioner is satisfied that all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful, the Public Sector Standards Commissioner—
 - (a) must issue a certificate in writing stating that he or she is so satisfied; and
 - (b) must indicate to the parties the Public Sector Standards Commissioner's assessment of the merits of the application; and
 - (c) if the Public Sector Standards Commissioner considers, having regard to all the materials before him or her, that the application has no reasonable prospect of success, he or she must advise the parties accordingly.
- (3) If the Public Sector Standards Commissioner has indicated that the application has no reasonable prospect of success, the Public Sector Standards Commissioner must invite the applicant to provide further information in support of the application within a period specified by the Public Sector Standards Commissioner.
- (4) If, in relation to an application to which subsection (3) applies—
 - (a) the applicant does not provide further information in support of the application; or

- (b) after consideration of the original application and the further material provided by the applicant in support—

the Public Sector Standards Commissioner concludes that the application has no reasonable prospect of success at arbitration, he or she must issue a certificate to that effect.

- (5) If the Public Sector Standards Commissioner issues a certificate under subsection (4) in respect of an application, the application is dismissed with effect from the date of issue of the certificate.

70K Applicant to elect whether or not to proceed to arbitration

S. 70K
inserted by
No. 80/2006
s. 3.

- (1) If the certificate given by the Public Sector Standards Commissioner under section 70J(2) certifies that conciliation is, or is likely to be, unsuccessful and the Public Sector Standards Commissioner has not issued a certificate under section 70J(4), the applicant must elect either to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable or not to proceed.
- (2) An election under subsection (1) must—
- (a) be made in writing; and
 - (b) be lodged with the Public Sector Standards Commissioner not later than 7 days after the day of issue of the certificate.
- (3) If an applicant fails to lodge with the Public Sector Standards Commissioner an election under subsection (1) within the period required under subsection (2), the application concerned is taken to have been discontinued by the applicant at the end of that period.

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- (4) The Public Sector Standards Commissioner may accept an election under subsection (1) that is lodged out of time if he or she considers that it would be unfair not to do so and, if he or she accepts such an election, the application concerned is taken not to have been discontinued despite subsection (3).

S. 70L
inserted by
No. 80/2006
s. 3.

70L Arbitration

- (1) If—
- (a) the Public Sector Standards Commissioner has issued a certificate under section 70J(2) regarding conciliation of an application relating to a termination of employment; and
 - (b) the applicant has made an election under section 70K(1) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable—
- the Public Sector Standards Commissioner may so proceed to arbitrate the matter.
- (2) Neither the making of an election under section 70K(1) to proceed to arbitration nor the commencement of that arbitration prevents further conciliation of the matter being attempted, or the parties from settling the matter, at any time before an order is made under section 70M.
- (3) In determining, for the purposes of the arbitration, whether a termination was harsh, unjust or unreasonable, the Public Sector Standards Commissioner must have regard to—
- (a) whether there was a valid reason for the termination related to the public sector employee's capacity or conduct (including its effect on the safety and welfare of other employees); and
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- (b) whether the public sector employee was notified of that reason; and
 - (c) whether the public sector employee was given an opportunity to respond to any reason related to the capacity or conduct of the employee; and
 - (d) if the termination related to unsatisfactory performance by the public sector employee, whether the employee had been warned about that unsatisfactory performance before the termination; and
 - (e) the degree to which the size of the employer's undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and
 - (f) the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and
 - (g) any other matters that the Public Sector Standards Commissioner considers relevant.

70M Remedies on arbitration

- (1) Subject to this section, the Public Sector Standards Commissioner may, on completion of the arbitration, make an order that provides for a remedy of a kind referred to in subsection (3), (4) or (6) if he or she has determined that the termination was harsh, unjust or unreasonable.

S. 70M
inserted by
No. 80/2006
s. 3.

(2) The Public Sector Standards Commissioner must not make an order under subsection (1) unless he or she is satisfied, having regard to all the circumstances of the case including—

- (a) the effect of the order on the viability of the employer's undertaking, establishment or service; and
- (b) the length of the public sector employee's service with the employer; and
- (c) the remuneration that the public sector employee would have received, or would have been likely to receive, if his or her employment had not been terminated; and
- (d) the efforts of the public sector employee (if any) to mitigate the loss suffered by him or her as a result of the termination; and
- (e) any other matter that the Public Sector Standards Commissioner considers relevant—

that the remedy ordered is appropriate.

(3) If the Public Sector Standards Commissioner considers it appropriate, he or she may make an order requiring the employer to reinstate the public sector employee by—

- (a) reappointing the public sector employee to the position in which he or she was employed immediately before the termination; or
- (b) appointing the public sector employee to another position on terms and conditions no less favourable than those on which he or she was employed immediately before the termination.

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- (4) If the Public Sector Standards Commissioner makes an order under subsection (3) and considers it appropriate to do so, he or she may also make—
- (a) any order that the Public Sector Standards Commissioner thinks appropriate to maintain the continuity of the public sector employee's employment; and
 - (b) subject to subsection (5), any order that the Public Sector Standards Commissioner thinks appropriate to cause the employer to pay to the public sector employee an amount in respect of the remuneration lost, or likely to have been lost, by the public sector employee because of the termination.
- (5) In determining an amount for the purposes of an order under subsection (4)(b), the Public Sector Standards Commissioner must have regard to—
- (a) the amount of any income earned by the public sector employee from employment or other work during the period between the termination and the making of the order for reinstatement; and
 - (b) the amount of any income reasonably likely to be so earned by the public sector employee during the period between the making of the order for reinstatement and the actual reinstatement.
- (6) If the Public Sector Standards Commissioner thinks that the reinstatement of the employee is inappropriate, he or she may, if he or she considers it appropriate in all the circumstances of the case, make an order requiring the employer to pay the public sector employee an amount ordered by the Public Sector Standards Commissioner in lieu of reinstatement.
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- (7) Subject to subsections (8), (9), (10) and (11), in determining an amount for the purposes of an order under subsection (6), the Public Sector Standards Commissioner must have regard to all the circumstances of the case including—
- (a) the effect of the order on the viability of the employer's undertaking, establishment or service; and
 - (b) the length of the public sector employee's service with the employer; and
 - (c) the remuneration that the public sector employee would have received, or would have been likely to receive, if his or her employment had not been terminated; and
 - (d) the efforts of the public sector employee (if any) to mitigate the loss suffered by him or her as a result of the termination; and
 - (e) any misconduct of the public sector employee that contributed to the employer's decision to terminate the public sector employee's employment; and
 - (f) any other matter that the Public Sector Standards Commissioner considers relevant.
- (8) An amount ordered by the Public Sector Standards Commissioner under subsection (4)(b) or (6) to be paid to an employee may not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the public sector employee by the manner of terminating his or her employment.
- (9) If the Public Sector Standards Commissioner is satisfied that misconduct of the public sector employee contributed to the employer's decision to terminate his or her employment, the Public Sector Standards Commissioner must reduce the amount he or she would otherwise fix under
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subsection (6) by an appropriate amount on account of the misconduct.

- (10) In fixing an amount under subsection (6) for an employee who was employed under award-derived conditions immediately before the termination, the Public Sector Standards Commissioner must not fix an amount that exceeds the total of the following amounts—
- (a) the total amount of remuneration—
 - (i) received by the public sector employee; or
 - (ii) to which the public sector employee was entitled—
(whichever is higher) for any period of employment with the employer during the period of 6 months immediately before the termination (other than any period of leave without full pay); and
 - (b) if the public sector employee was on leave without pay or without full pay while so employed during any part of that period, the amount of remuneration taken to have been received by him or her for the period of leave in accordance with regulations made for the purposes of section 654(11)(b) of the Commonwealth Act.
- (11) In fixing an amount under subsection (6) for a public sector employee who was not employed under award-derived conditions immediately before the termination, the Public Sector Standards Commissioner must not fix an amount that exceeds—
- (a) the total of the amounts determined under subsection (10) if the public sector employee were an employee covered by the subsection; or
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s. 70N

(b) the amount of \$32,000, as indexed from time to time in accordance with a formula prescribed by regulations made for the purposes of section 654(12)(b) of the Commonwealth Act—

whichever is the lower amount.

(12) For the avoidance of doubt, an order by the Public Sector Standards Commissioner under subsection (4)(b) or (6) may permit the employer concerned to pay the amount required in instalments specified in the order.

S. 70N
inserted by
No. 80/2006
s. 3.

70N Orders made on arbitration are binding

An order made by the Public Sector Standards Commissioner under section 70M is final and binding between the parties.

S. 70P
inserted by
No. 80/2006
s. 3.

70P Public Sector Standards Commissioner may dismiss application if applicant fails to attend

If an applicant in a proceeding relating to an application under section 70E(1) fails to attend the proceeding, the Public Sector Standards Commissioner, after giving the applicant reasonable notice and a reasonable opportunity to be heard, may dismiss the application under that section.

S. 70Q
inserted by
No. 80/2006
s. 3.

70Q Limitation on applications under section 70E(1)

(1) An application under section 70E(1) must not be made if other termination proceedings have already been commenced in respect of the termination of employment, unless the other termination proceedings—

- (a) have been discontinued by the relevant public sector employee who commenced the proceedings; or
- (b) have failed for want of jurisdiction.

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- (2) If at any time before an application made under section 70E(1) is determined under this Subdivision other termination proceedings are commenced by the relevant public sector employee under Division 4 of Part 12 of the Commonwealth Act (the ***Commonwealth Division***) in respect of the termination of employment—
- (a) while the proceedings are before the Australian Industrial Relations Commission, the Public Sector Standards Commissioner is not required to attempt to settle the matter to which the application relates by conciliation or to arbitrate the matter, despite anything to the contrary in this Subdivision; and
 - (b) the Public Sector Standards Commissioner must make an order dismissing the application under section 70E(1) if the relevant public sector employee begins proceedings in a court for an order under the Commonwealth Division in respect of an alleged contravention of that Division.
- (3) In this section ***other termination proceedings*** means proceedings in respect of a termination of the employment of a public sector employee—
- (a) for a remedy in respect of the termination—
 - (i) under a provision of a law of the State (other than section 70E(1)); or
 - (ii) under a provision of the Commonwealth Act; or
 - (iii) under another law of the Commonwealth; and
 - (b) that allege that the termination was unlawful for any reason (other than a failure by the employer to provide a benefit to which the employee was entitled on the termination).
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- (4) Without limiting subsection (3), *other termination proceedings* includes an inquiry in respect of a complaint (the *equal opportunity complaint*)—
- (a) made under the **Equal Opportunity Act 1995** or the Human Rights and Equal Opportunity Commission Act 1986 of the Commonwealth; and
 - (b) that relates to the termination of employment of a public sector employee (whether or not as a result of an amendment of the complaint).
- (5) For the purposes of this section, a public sector employee commences other termination proceedings of a kind referred to in subsection (4)—
- (a) unless paragraph (b) applies, when the employee makes the equal opportunity complaint; or
 - (b) if the equal opportunity complaint constitutes, or would constitute, other termination proceedings only as a result of an amendment of the complaint, when the complaint is amended.
- (6) For the avoidance of doubt, a proceeding seeking compensation, or the imposition of a penalty, because an employer has failed, in relation to a termination of employment, to meet an obligation—
- (a) to give adequate notice of the termination; or
 - (b) to provide a severance payment as a result of the termination; or
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(c) to provide any other entitlement payable as a result of the termination—

is taken to be a proceeding alleging that the termination was unlawful because of a failure to provide a benefit to which the employee was entitled on the termination.

70R No second applications under section 70E(1) concerning same termination to be made

S. 70R
inserted by
No. 80/2006
s. 3.

An application must not be made under section 70E(1) in relation to a termination of employment of a relevant public sector employee where a previous application under that section was made in respect of the same termination unless the second application corrects an error in the previous application, or the Public Sector Standards Commissioner considers that it would be fair to accept the second application.

70S Orders to be in writing

S. 70S
inserted by
No. 80/2006
s. 3.

An order of the Public Sector Standards Commissioner under this Subdivision must be in writing.

70T When orders take effect

S. 70T
inserted by
No. 80/2006
s. 3.

An order of the Public Sector Standards Commissioner under this Subdivision takes effect from the date of the order or a later date specified in the order.

70U Compliance with orders

S. 70U
inserted by
No. 80/2006
s. 3.

(1) An order under this Subdivision is, unless the order provides otherwise, taken to bind the employer and relevant public sector employee covered by the order.

s. 70V

- (2) In addition to any other right that a relevant public sector employee covered by an order under this Subdivision may have, he or she may apply to a court of competent jurisdiction to enforce the order by injunction or otherwise as the court thinks fit.

S. 70V
inserted by
No. 80/2006
s. 3.

70V Variation and revocation of orders

- (1) The Public Sector Standards Commissioner may vary or revoke an order under this Subdivision on application by the employer or the relevant public sector employee covered by it.
- (2) This section does not apply to an order under section 70F(3) or 70G or to a decision on an extension of time application within the meaning of section 70H.

S. 70W
inserted by
No. 80/2006
s. 3.

70W Public Sector Standards Commissioner may determine procedure

Subject to this Subdivision and any regulations made for the purposes of this Subdivision, the Public Sector Standards Commissioner may determine the procedure to be followed with respect to any proceeding under this Subdivision.

S. 70X
inserted by
No. 80/2006
s. 3.

70X Personal liability

- (1) The Public Sector Standards Commissioner or any delegate of the Public Sector Standards Commissioner is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a function under this Subdivision; or
- (b) in the reasonable belief that the act or omission was in the exercise of a function under this Subdivision.

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- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a person referred to in that subsection attaches instead to the Authority.

70Y Immunity of participants

S. 70Y
inserted by
No. 80/2006
s. 3.

- (1) An Australian legal practitioner within the meaning of the **Legal Profession Act 2004** representing a party in a proceeding under this Subdivision has the same protection and immunity as such a person has in representing a party in proceedings in the Supreme Court.
- (2) A party to a proceeding under this Subdivision has the same protection and immunity as a party to proceedings in the Supreme Court.
- (3) A person appearing as a witness in a proceeding under this Subdivision has the same protection and immunity as a witness has in proceedings in the Supreme Court.

70Z Regulations

S. 70Z
inserted by
No. 80/2006
s. 3.

Without limiting section 112, regulations may be made for the purposes of this Subdivision for or with respect to—

- (a) excluding a specified class of public sector employee from the operation of this Subdivision;
- (b) the practice and procedure to be followed by the Public Sector Standards Commissioner under this Subdivision including—
- (i) the manner in which, and the time within which, applications, submissions and objections may be made to the Public Sector Standards Commissioner; and

- (ii) the manner in which applications, submissions and objections may be dealt with by the Public Sector Standards Commissioner; and
- (iii) steps to be taken before a decision is made in a matter in relation to which it is not proposed to hold a hearing; and
- (iv) prohibiting the Public Sector Standards Commissioner extending the period within which any specified thing is required to be done.

Subdivision 6—Role 6

Pt 4 Div. 2
Subdiv. 6
(Heading)
amended by
No. 80/2006
s. 4(6).

71 Statement of role 6

Role 6 of the Authority is to establish and maintain a register of instruments issued under this Act.

S. 71
(Heading)
amended by
No. 80/2006
s. 4(7).
S. 71
amended by
No. 80/2006
s. 4(8).

72 Register

- (1) The register must be kept electronically.
- (2) The register must contain up-to-date versions of the following—
 - (a) any code of conduct issued by the Public Sector Standards Commissioner;
 - (b) any standards issued by the Public Sector Standards Commissioner;
 - (c) any Order made by the Governor in Council under Part 5;

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- (d) any other instrument issued under this Act that the Premier directs, in writing, the Authority to enter in the register.
 - (3) The Authority may enter additional material in the register if the Authority considers that it is likely to be useful to public sector employees.
 - (4) The Authority must ensure, as far as practicable, that the contents of the register are accessible to the public at all times without charge on an Internet site.

Division 3—Annual plans and reports

73 Authority's annual plan

- (1) Before the date fixed by the Premier in relation to a financial year, the Authority must—
 - (a) prepare a draft annual plan describing the Authority's proposed work program for that year; and
 - (b) submit the draft to the Premier for approval.
- (2) The Premier must consider the draft annual plan and may approve it—
 - (a) with or without changes; or
 - (b) subject to any conditions that the Premier wishes to impose.
- (3) With the approval of the Premier, the Authority may, at any time during a financial year, amend the approved annual plan for that financial year.

74 Authority and PSSC reports

- (1) The Authority must, in respect of each year ending 30 June, prepare an annual report on—
 - (a) its operations during the year; and

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- (b) the adherence by public officials to public sector values during the year and their compliance with any applicable code of conduct; and
 - (c) the application during the year of the public sector values, public sector employment principles, codes of conduct and standards; and
 - (d) the profile of the public service and the public sector; and
 - (e) any other matter which the Authority considers it appropriate to include in its report—

and submit the report to the Premier not later than the date fixed by the Premier in relation to that year.

- (2) To assist it with the preparation of an annual report, the Authority may require the Head of a public sector body to provide it with such information, at such times and in such manner as it may specify.
 - (3) The Public Sector Standards Commissioner may at any time prepare a report on any review conducted under section 64 by him or her or on his or her behalf and submit the report to the Premier.
 - (4) The Premier must cause each report submitted to him or her under this section to be laid before each House of Parliament within 7 sitting days after receiving it.
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PART 5—OPERATION OF PUBLIC ENTITIES

Division 1—Preliminary

75 Application of Part

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

- (a) apply Division 2 or 3 or both Divisions 2 and 3 or any provision of any of those Divisions to a public entity, or a class of public entity, established before the commencement of this Part; or
- (b) exempt a public entity, or a class of public entity, from the application of Division 2 or 3 or both Divisions 2 and 3 or from any provision of any of those Divisions; or
- (c) declare a public entity, that would otherwise be a small entity, not to be a small entity for the purposes of this Part.

76 This Part to prevail

- (1) Except as otherwise provided by this Part, if a provision of this Part, or of a regulation or Order made under this Part, that applies to a public entity is inconsistent with, or has the same or a similar effect as, a provision of the Act or subordinate instrument or other document under which the public entity is established (including a provision of the **State Owned Enterprises Act 1992** or of an Order under that Act), the provision of this Part or of the regulation or Order made under this Part prevails or applies in place of the other provision.

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- (2) Subsection (1) does not have the effect of allowing a provision of this Part or of a regulation or Order made under this Part—
- (a) that is of a general nature to prevail over, or apply in place of, a provision of a specific nature of the Act or subordinate instrument or other document under which a public entity is established; or
 - (b) to prevail over, or apply in place of, a provision of the Act or subordinate instrument or other document under which the public entity is established that is more stringent in nature—

and compliance with the specific or more stringent provision in relation to a matter must be taken to be compliance with the general or less stringent provision in relation to that matter.

Example

Section 65ZF of the **Health Services Act 1988** requires the board of a public health service to prepare a strategic plan for the operation of the service and section 65ZFA of that Act requires it to prepare a statement of priorities for each financial year dealing with certain specified matters. A public health service is a standard entity. Compliance with these specific more stringent requirements would satisfy the requirements imposed by section 95(1)(d)(i) and (ii) of this Act.

- (3) The provisions of this Part are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the Corporations legislation.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

Division 2—Governance principles

77 Application of Division

- (1) Except as otherwise provided by an Order made under section 75(a), this Division only applies to public entities established on or after the commencement of this Part.
- (2) This Division, or a provision of this Division, does not apply to a public entity that is exempted from its application by an Order made under section 75(b).

78 Other duties not affected

- (1) Nothing in this Division affects or limits any other duty imposed on a director of a public entity by or under any other provision of this Act.
- (2) This Division has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of directors and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

79 Duties of directors

- (1) A director of a public entity must at all times in the exercise of the functions of his or her office act—
 - (a) honestly; and
 - (b) in good faith in the best interests of the public entity; and
 - (c) with integrity; and
 - (d) in a financially responsible manner; and
 - (e) with a reasonable degree of care, diligence and skill; and

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- (f) in compliance with the Act or subordinate instrument or other document under which the public entity is established.
- (2) A person who is or has been a director of a public entity must not, except to the extent necessary—
- (a) to exercise functions under this or any other Act; or
 - (b) to give any information that he or she is expressly authorised, permitted or required to give under this or any other Act—
give to any other person, whether directly or indirectly, any information acquired by him or her by reason of being a director.
- (3) A director of a public entity must not improperly use his or her position, or any information acquired by him or her by reason of his or her position, to—
- (a) gain an advantage for himself or herself or another person; or
 - (b) cause detriment to the public entity.
- (4) A director of a public entity who becomes a candidate for an election to the Parliament of Victoria or of the Commonwealth or of any other State or a Territory or to a Council within the meaning of the **Local Government Act 1989** or a corresponding body in another jurisdiction—
- (a) must notify the board of the public entity of that fact; and
 - (b) must not use any resources of the public entity in connection with his or her candidature.
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80 Duties of chairperson

The chairperson of a public entity (other than a Commissioner entity) must ensure that all policies adopted by, or relevant to, the public entity or the board of the public entity are provided to, or made readily accessible to, all directors of the entity.

81 Duties of entity

- (1) The board of a public entity must—
 - (a) act consistently with the functions and objectives of the entity and with any business or strategic plan or other document relevant to the work program of the entity; and
 - (b) inform the Minister responsible for the public entity and the relevant Department Head of known major risks to the effective operation of the entity and of the risk management systems that it has in place to address those risks; and
 - (c) unless prohibited from doing so by or under any law, provide the Minister responsible for the public entity with any information relating to the entity or its operations that he or she requests; and
 - (d) except in the case of a Commissioner entity, ensure that adequate procedures are in place for—
 - (i) assessing the performance of individual directors; and
 - (ii) dealing with poor performance by directors; and
 - (iii) resolving disputes between directors; and
 - (e) ensure that a code of conduct applicable to directors is in place; and

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- (f) ensure that processes are in place to deal with conflicts of interests in directors that—
- (i) apply to both financial and non-financial interests;
 - (ii) require full disclosure of interests at meetings of the board and the recording of the disclosure in the minutes of the meeting;
 - (iii) require the board to determine whether a conflict of interests in a matter is material;
 - (iv) enable the board to—
 - (A) require the absence from a meeting of a director who has a material conflict of interest in a matter while the board is considering the matter;
 - (B) prohibit such a director from taking part in any decision of the board in relation to the matter;
 - (v) require the board to notify in writing the Minister responsible for the entity as soon as practicable after becoming aware of any breach of the processes; and
- (g) ensure that an adequate gifts policy for directors is in place; and
- (h) except in the case of a Commissioner entity or as otherwise provided by an Order made under subsection (3) in the case of an advisory entity, ensure that adequate procedures are in place for the conduct of meetings and the making of decisions at meetings, including appropriate
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- arrangements for acting directors, and that appropriate records of meetings are kept; and
- (i) except in the case of an entity that has no money or other property under its management or control or as otherwise provided by an Order made under subsection (3) in the case of an advisory entity, ensure that appropriate financial records are kept; and
 - (j) ensure that adequate controls are in place to prevent fraudulent behaviour; and
 - (k) except in the case of an advisory entity, a small entity or an entity that is otherwise required to have its financial statements or accounts audited by the Auditor-General, ensure that its financial statements or accounts are audited by the Auditor-General at intervals of no greater than 3 years.
- (2) A public entity may satisfy a requirement under subsection (1) to have a particular code or policy in place by applying, with appropriate adaptations, a code or policy of another public sector body consistent with the public sector values.
- (3) The Governor in Council may, by Order published in the Government Gazette, make provision in relation to an advisory entity, or a class of advisory entity, in substitution for that made by paragraph (h) or (i) of subsection (1).

82 Public entity not to make loans to directors

- (1) The powers of a public entity do not include a power, whether directly or indirectly—
 - (a) to make a loan to a director of the public entity or to a relative (as defined in the Corporations Act) of such a director or of a spouse of such a director; or

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- (b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a director or relative referred to in paragraph (a).
- (2) Nothing in subsection (1) prohibits a public entity entering into an agreement or arrangement with a person referred to in subsection (1) if similar agreements or arrangements are entered into by the public entity with members of the public on the same terms and conditions.

83 Sub-committees

- (1) A public entity may form or dissolve sub-committees and define their functions and membership.
- (2) The membership of a sub-committee is not restricted to directors of the public entity that formed it.
- (3) A public entity may, by instrument, delegate to the members of a sub-committee who are directors of the public entity any of its functions, except this power of delegation.

84 Subsidiaries

- (1) A public entity that has the power to form, or participate in the formation of, a body corporate and that intends to do so must, within a reasonable time before doing so, notify in writing the Minister responsible for the public entity and the Treasurer of that intention.

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- (2) The Minister responsible for the public entity may direct the public entity not to form, or participate in the formation of, a body corporate or impose restrictions or conditions on the exercise of the power including restrictions or conditions as to—
 - (a) the powers to be conferred on the body corporate; or
 - (b) obligations or duties to be imposed on the body corporate.
 - (3) A public entity must comply with a direction given to it by a Minister under subsection (2).

85 Accountability

- (1) The board of a public entity is accountable to the Minister responsible for the entity for the exercise of its functions.
- (2) The Minister responsible for a public entity is responsible to the Parliament in respect of—
 - (a) the exercise by the public entity of its functions;
 - (b) the exercise by the Minister of his or her powers in relation to the public entity including—
 - (i) the power to appoint directors or remove them from office, or recommend the appointment or removal from office of directors;
 - (ii) the power to give directions to the public entity or request information from it;
 - (iii) the power to control or affect its operations;
 - (iv) the power to initiate a review of the public entity's management systems, structures or processes.

86 Injunctions

- (1) The Minister responsible for a public entity may apply to the Magistrates' Court for the grant of an injunction restraining the entity or a director of the entity from engaging in conduct that—
 - (a) would constitute a contravention of this Act or the Act or subordinate instrument or other document under which the entity is established; or
 - (b) would otherwise be contrary to law.
- (2) The Magistrates' Court may grant an injunction or, pending the determination of an application under subsection (1), may grant an interim injunction, restraining a public entity or a director of a public entity from engaging in conduct of the kind referred to in subsection (1) if the Court considers that it is just and equitable to do so.
- (3) The Magistrates' Court does not have power under this section to grant an injunction or an interim injunction in relation to conduct that a public entity or a director of a public entity acting in a quasi-judicial capacity in relation to a particular matter is entitled to engage in under the Act or subordinate instrument or other document under which the entity is established.

87 Public entity or Minister may bring proceedings

If a director of a public entity contravenes this Division in relation to the public entity, the public entity or the Minister responsible for the public entity, in the name of the public entity, may recover from the director as a debt due to the public entity by action in a court of competent jurisdiction either or both of the following—

- (a) if the director, or any other person, made a profit as a result of the contravention, an amount equal to that profit;
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- (b) if the public entity has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

Division 3—Removal, suspension or standing down of directors

88 Application of Division

- (1) Except as otherwise provided by an Order made under section 75(a), this Division only applies to public entities established on or after the commencement of this Part.
- (2) This Division, or a provision of this Division, does not apply to a public entity that is exempted from its application by an Order made under section 75(b).

89 Power to remove or suspend directors

- (1) Without limiting section 41 of the **Interpretation of Legislation Act 1984** or any power or duty conferred or imposed by or under any other Act or law, the person who has power to appoint a director of a public entity to the office of director has power—
- (a) to remove the director from office; and
- (b) to suspend the director from office for a period not exceeding one month—
- if he or she believes that the director has contravened a code of conduct that is applicable to him or her or a duty or obligation otherwise imposed on him or her by or under this Act.
- (2) A suspension imposed under the power conferred by subsection (1) cannot be extended or renewed.

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- (3) A suspended director is, by force of this subsection, restored to office at the end of the period of suspension unless he or she is removed from office within that period.
 - (4) Subject to subsection (5), in exercising a power conferred by subsection (1) to remove a director from office, the person exercising the power must do so by notice in writing delivered to the director that—
 - (a) specifies a date, not earlier than 7 days after the date of the notice, on which the removal is to take effect; and
 - (b) informs the director that at any time prior to the removal taking effect he or she may submit to the person exercising the power reasons as to why he or she should not be removed from office.
 - (5) If the person exercising the power is the Governor in Council on the recommendation of a Minister, that Minister must deliver to the director a notice in writing that—
 - (a) specifies a date, not earlier than 7 days after the date of the notice, on which the removal is to take effect; and
 - (b) informs the director that at any time prior to the removal taking effect he or she may submit to the Minister reasons as to why he or she should not be removed from office.
 - (6) A person who has exercised a power conferred by subsection (1) to remove a director from office may revoke the notice of removal, by notice in writing delivered to the director, at any time before it takes effect.
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- (7) To avoid doubt, subsection (1) does not confer power to remove or suspend from office a director of a public entity who holds an office to which he or she has been elected otherwise than by the board of the public entity.
- (8) The office of a director becomes vacant if the director—
- (a) becomes an insolvent under administration;
or
 - (b) is convicted of an indictable offence or of an offence that, if committed in Victoria, would be an indictable offence.
- (9) A director may resign from office by notice in writing delivered to the person who has power to appoint a new director in his or her place.
- (10) If—
- (a) the public entity in which the director holds office is a company (within the meaning of the Corporations Act) all the shares in which are held by, or on behalf of, the State; and
 - (b) a provision of this section is inconsistent with a provision of the company's constitution—
- the provision of the company's constitution prevails.
- (11) This section does not apply to a director of a public entity that exercises functions that are of a quasi-judicial nature.

S. 89(8)(a)
amended by
No. 4/2008
s. 32(Sch.
item 28).

90 Standing down of director of quasi-judicial entity

- (1) A director of a public entity that exercises functions that are of a quasi-judicial nature who is charged with an indictable offence must stand down from his or her office until the charge is finally determined.
- (2) A director who stands down in accordance with subsection (1) continues to be entitled to receive any salary, fee or allowance which he or she would be entitled to receive if he or she had not stood down.

Division 4—General

91 Application of Division

- (1) Except as otherwise provided by this Division, this Division applies to all public entities, whether established before or after the commencement of this Part.
- (2) A special body may determine, in writing, to be bound by any or all of the provisions of this Division in its capacity as a special body and, if it so determines, the provision applies to that body in that capacity.

92 Power to make public entities subject to specified whole of government policies

- (1) On the recommendation of the Premier the Governor in Council may, by Order published in the Government Gazette, require all public entities, or a specified public entity or class of public entity, to comply with a specified whole of government policy of any kind for the purpose of improving operating standards or service delivery or otherwise supporting a whole of government approach.

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- (2) The Premier must not recommend the making of an Order under subsection (1) unless he or she is satisfied that adequate consultation has occurred.
 - (3) Nothing in this section authorises the making of an Order in relation to a public entity that exercises functions that are of a quasi-judicial nature that would impede the exercise of any such function.
 - (4) Nothing in this section authorises the making of an Order in relation to a public entity—
 - (a) that would impede the exercise of any statutorily independent function that it has; or
 - (b) intended to bring about a particular result or achieve a particular outcome in a particular matter over which the entity has jurisdiction.

93 Requirement to provide financial information

- (1) The board of a public entity must provide to the Treasurer or the Minister administering section 44A of the **Financial Management Act 1994**, at a time and in a manner specified by that Minister, any financial information requested by that Minister.
- (2) A request under subsection (1) must be made in writing.
- (3) A Minister who makes a request under subsection (1) to a public entity must notify the Minister responsible for that entity of that request as soon as practicable after making it.

94 Requirement to provide non-financial information

- (1) The Premier may, by notice in writing delivered to a public entity, require the entity to provide, at a time and in a manner and in the circumstances specified by the Premier, information, other than financial information, of a kind specified by the Premier.
- (2) A requirement made by the Premier under subsection (1) may be made in relation to a particular public entity or a particular class of public entity.

95 Documents required to be kept by standard entities

- (1) A standard entity must keep and make readily available to directors of the entity—
 - (a) a register containing the prescribed documents or class of documents relating to the accountability and reporting arrangements applicable to the entity;
 - (b) any document issued to the entity by the Minister responsible for the entity or the Head of the Department with administrative responsibility for the entity outlining the respective roles of, and the relationships between, the entity, the Department and the Minister;
 - (c) any document issued to the entity by the Minister responsible for the entity outlining the term of appointment of directors and their roles and responsibilities;
 - (d) a copy of any corporate plan, in the form prescribed by the regulations (if any), adopted by the entity and (except in the case of an entity that is a State owned enterprise within the meaning of the **State Owned Enterprises Act 1992**) approved by the
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Minister responsible for the entity in respect of a period containing—

- (i) a statement of the entity's medium-term intentions and undertakings (a **statement of corporate intent**); and
 - (ii) a business plan; and
 - (iii) financial statements;
- (e) a copy of any annual report of the entity submitted to the Minister responsible for the entity;
- (f) any other document of a planning nature of a kind specified by the Minister responsible for the entity in writing to the entity as required to be kept and made available.
- (2) The Minister responsible for a standard entity must ensure that a document of a kind referred to in subsection (1)(c) is issued to the entity.
- (3) Unless the context otherwise requires, a requirement under this section to keep and make available a document is a requirement to keep and make available an up-to-date version of the document.
- (4) In this section **standard entity** includes a public entity that exercises functions that are of a quasi-judicial nature.

96 Documents required to be kept by small entities

- (1) A small entity must keep and make readily available to directors of the entity—
- (a) any document issued to the entity by the Minister responsible for the entity outlining the respective roles of, and the relationships between, the entity, the Department with administrative responsibility for the entity and the Minister;

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- (b) any document issued to the entity by the Minister responsible for the entity outlining the term of appointment of directors and their roles and responsibilities;
 - (c) a copy of any corporate plan, in the form prescribed by the regulations (if any), adopted by the entity and approved by the Minister responsible for the entity in respect of a period containing—
 - (i) a statement of the entity's medium-term intentions and undertakings (a **statement of corporate intent**); and
 - (ii) a business plan; and
 - (iii) financial statements;
 - (d) any other document of a planning nature of a kind specified by the Minister responsible for the entity in writing to the entity as required to be kept and made available.
- (2) The Minister responsible for a small entity must ensure that a document of a kind referred to in subsection (1)(b) is issued to the entity.
- (3) The Governor in Council may, by Order published in the Government Gazette, exempt (either generally or in specified circumstances) a small entity, or a class of small entity, from the whole or any specified part of the requirement to prepare and keep a document of a kind referred to in subsection (1)(c).
- (4) Unless the context otherwise requires, a requirement under this section to keep and make available a document is a requirement to keep and make available an up-to-date version of the document.
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97 Documents required to be kept by advisory entities

- (1) An advisory entity must keep and make readily available to directors of the entity—
 - (a) any document issued to the entity by the Minister responsible for the entity outlining the respective roles of, and the relationships between, the entity, the Department with administrative responsibility for the entity and the Minister;
 - (b) any document issued to the entity by the Minister responsible for the entity outlining the term of appointment of directors and their roles and responsibilities;
 - (c) any other document of a planning nature of a kind specified by the Minister responsible for the entity in writing to the entity as required to be kept and made available.
 - (2) The Minister responsible for an advisory entity must ensure that a document of a kind referred to in subsection (1)(b) is issued to the entity.
 - (3) Unless the context otherwise requires, a requirement under this section to keep and make available a document is a requirement to keep and make available an up-to-date version of the document.
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**PART 6—EMPLOYMENT OF MINISTERIAL OFFICERS,
PARLIAMENTARY ADVISERS AND JUDICIAL EMPLOYEES**

Division 1—Ministerial officers

98 Employment of Ministerial officers

- (1) The Premier may employ a person as a Ministerial officer for a term, not exceeding 4 years, and on terms and conditions specified in the person's contract of employment.
- (2) If an employee who is on leave of absence without pay is appointed as a Ministerial officer, he or she is, for the purposes of the **State Superannuation Act 1988**, to be taken to be on leave of absence with pay for the duration of that appointment.

Division 2—Parliamentary Advisers

99 Employment of Parliamentary advisers

- (1) Subject to the directions of the Premier in respect of conditions of employment and termination of employment, the Leader of the Opposition or a member of the Parliament of Victoria who is the Leader of another party represented in the Parliament by at least one other member may employ any person as a Parliamentary adviser for a term, not exceeding 4 years, specified in the person's contract of employment.
 - (2) Subject to the directions of the Premier in respect of conditions of employment and termination of employment, a member of the Parliament of Victoria who is not a member of a party or is the sole representative in the Parliament of a party may employ any person as a Parliamentary adviser for a term, not exceeding 4 years, specified in the person's contract of employment.
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- (3) If an employee who is on leave of absence without pay is appointed as a Parliamentary adviser, he or she is, for the purposes of the **State Superannuation Act 1988**, to be taken to be on leave of absence with pay for the duration of that appointment.

100 Delegation

Subject to the directions of the Premier, a person empowered under this Division to employ any person as a Parliamentary adviser may, by instrument, delegate that power to any person.

Division 3—Judicial employees

101 Judicial employees

In this Division *judicial employee* means—

- (a) an associate to a Judge of the Supreme Court or County Court; or
- (b) a secretary of, or associate to, a Master of the Supreme Court or the County Court; or
- (c) a tipstaff of a Judge of the Supreme Court or County Court.

102 Employment of judicial employees

- (1) The appropriate public service body Head may employ any person as a judicial employee.
- (2) The public sector employment principles apply to the employment of judicial employees.

103 Termination of employment as judicial employee

- (1) The employment of a judicial employee may be terminated at any time by the appropriate public service body Head giving the employee, or the employee giving that Head, notice of termination in accordance with subsection (2).

Public Administration Act 2004
No. 108 of 2004

Part 6—Employment of Ministerial Officers, Parliamentary Advisers and
Judicial Employees

s. 103

- (2) The notice must be—
 - (a) 4 weeks notice of termination; or
 - (b) any other period of notice agreed between the public service body Head and the employee.
- (3) A person who was an employee immediately before his or her employment under this Division, retains any right to long service, annual, sick or other leave accrued or accruing to him or her immediately before that employment.
- (4) A person who was an employee in a public service body immediately before his or her employment under this Division is deemed, on the termination of his or her employment as a judicial employee, to be re-employed in that public service body on the same terms and conditions as before his or her employment under this Division.
- (5) Subject to Subdivision 5A of Division 2 of Part 4, a judicial employee is not entitled to compensation as a result of the termination of his or her employment under this Division.

S. 103(5)
amended by
No. 80/2006
s. 4(9).

PART 7—DECLARED AUTHORITIES

104 What are declared authorities?

- (1) In this section *authority* means—
 - (a) a public entity; or
 - (b) a statutory office; or
 - (c) a prerogative office; or
 - (d) any group of people employed in the service of the Crown.
- (2) The Governor in Council may, by Order published in the Government Gazette—
 - (a) declare an authority to be a declared authority; and
 - (b) specify the person or body who is to have the functions of a public service body Head in relation to that declared authority; and
 - (c) specify the provisions of this Act which are to apply to that declared authority.
- (3) An Order cannot be made under subsection (2) in relation to—
 - (a) an exempt body or an exempt body official in his or her capacity as such an official;
 - (b) an office specified in section 16(1); or
 - (c) a person covered by section 106(1), except an Assistant Commissioner of Police; or
 - (d) an office or the holder of an office under an Act that provides that the holder may or must be removed from that office following an address, declaration, resolution or other involvement of either or both Houses of Parliament; or

- (e) a State owned enterprise, except at the request of the Minister responsible for it; or
- (f) a public entity specifying that standards issued under section 66(2) are to apply to it, except after consultation between the Premier and the Minister responsible for the entity.

105 Application of Act to declared authorities

- (1) A provision of this Act applies in relation to a particular declared authority only if it is specified in the Order made under section 104(2) in relation to that authority.
- (2) A reference in a provision of this Act applying in relation to a declared authority to—
 - (a) a public service body or the public service, is to be taken to be a reference to the declared authority; and
 - (b) a public service body Head, is to be taken to be a reference to the person specified in the Order as having the functions of a public service body Head in relation to the declared authority; and
 - (c) an employee, is to be taken to be a reference—
 - (i) in the case of a declared authority that is a statutory office or a prerogative office, to the holder of that office; and
 - (ii) in any other case, to an employee of the declared authority.
- (3) A provision of this Act applying in relation to a declared authority prevails over any inconsistent provision made by or under any other Act or other document, irrespective of when made.

PART 8—MISCELLANEOUS

106 Act not to apply to certain persons

- (1) Except to the extent that a provision of this Act otherwise expressly provides, this Act does not apply to a person in his or her capacity as, or to the appointment or employment of a person as—
- (a) a judge of the Supreme Court;
 - (b) a judge of the County Court;
 - (c) a master of the Supreme Court within the meaning of Part III of the **Constitution Act 1975**;
 - (d) a master of the County Court;
 - (e) a magistrate;
 - (f) a coroner appointed under the **Coroners Act 1985**;
 - (g) the Solicitor-General;
 - (h) the Director of Public Prosecutions, the Acting Director of Public Prosecutions, the Chief Crown Prosecutor, the Acting Chief Crown Prosecutor or any Crown Prosecutor or Associate Crown Prosecutor;
 - (i) a person under the **Police Regulation Act 1958**;
 - (j) a Parliamentary officer within the meaning of the **Parliamentary Administration Act 2005**.
- (2) Subsection (1) does not prevent a person covered by that subsection from having or exercising any functions of a public service body Head.

S. 106(1)(j)
substituted by
No. 20/2005
s. 52(2).

107 Protection from reprisal

- (1) A person who is not a public official or an exempt body official must not take detrimental action against another person who is a public official or an exempt body official for the reason that the other person is such an official.

Penalty: 240 penalty units or 2 years imprisonment or both.

- (2) In determining whether a person has taken detrimental action against a public official or an exempt body official it is irrelevant whether or not the reason referred to in subsection (1) is the only or dominant reason as long as it is a substantial reason.

108 Proceedings for damages for reprisal

- (1) A person who, in contravention of section 107(1), takes detrimental action against another person who is a public official or an exempt body official for the reason that the other person is such an official is liable in damages to that person.
- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.
- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the detrimental action.

109 Delegation by Premier and public service body Minister

- (1) The Premier may, by instrument, delegate to any person any of his or her functions under this Act, other than this power of delegation.
- (2) A public service body Minister may, by instrument, delegate to any person any of his or her functions under this Act, other than this power of delegation.

110 Exercise of functions in person's absence

- (1) If by or under any Act or other document a function is given to an office holder or other person in the service of the Crown (other than a Minister of the Crown) in their capacity as such, the function may be exercised by any other person in the service of the Crown whom the public service body Minister, in writing, directs to do so while—
 - (a) the person with the function is unable (whether because of illness, absence or otherwise) to exercise it; or
 - (b) no-one is employed to exercise it.
- (2) A person exercising a function under subsection (1)—
 - (a) must be taken for all purposes to be the person for whom he or she is acting; and
 - (b) has, in connection with the exercise of the function, all the powers of the person for whom he or she is acting.

S. 110(1)
amended by
No. 20/2005
s. 49.

111 Evidence Act provisions to apply

Sections 14, 15 and 16 of the **Evidence Act 1958** apply in relation to any investigation or proceedings which the Public Sector Standards Commissioner, a public service body Head or any other person or body is authorised to conduct by or under this Act as if they were a Board appointed by the Governor in Council.

112 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.

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- (3) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
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s. 115

- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
- (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

Ss 113, 114
repealed by
No. 80/2006
s. 24(4).

* * * * *

115 Privileges of former members of Parliament and unsuccessful Parliamentary candidates

Schedule 1 has effect.

S. 115A
inserted by
No. 83/2008
s. 18.

115A Salary sacrifice by office holders

Schedule 1A has effect.

116 Saving and transitional provisions

Schedule 2 contains saving and transitional provisions.

S. 117
repealed by
No. 80/2006
s. 24(4).

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Pt 9
(Heading and
ss 118–127)
repealed by
No. 80/2006
s. 24(5).

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SCHEDULES

SCHEDULE 1

Section 115

PRIVILEGES OF FORMER MEMBERS OF PARLIAMENT AND UNSUCCESSFUL PARLIAMENTARY CANDIDATES

1 Definitions

In this Schedule—

Parliament means—

- (a) the Parliament of Victoria; or
- (b) the Parliament of the Commonwealth of Australia;

police force includes the officers and other members of the police force of Victoria;

public service includes as well as employees in the public service—

- (a) permanent and temporary medical officers employed under the **Mental Health Act 1986**;
- (b) any employee within the meaning of section 3(1) of the **Emergency Services Superannuation Act 1986**;
- (c) any officer within the meaning of the **State Superannuation Act 1988** not otherwise included within the definitions of *public service* or *teaching service*;

Sch. 1 cl. 1
def. of
public service
amended by
No. 23/2006
s. 247.

Sch. 1

Sch. 1 cl. 1
def. of
*teaching
service*
amended by
Nos 28/2007
s. 3(Sch.
item 55),
58/2007
s. 54(3).

teaching service includes, as well as officers and employees in the teaching service, any person who is certified by the Secretary to the Department of Education and Early Childhood Development to be employed in whole-time duties on the permanent staff of any school or schools for technical education receiving aid from the Consolidated Fund.

2 Privileges of former members of Parliament

- (1) A member of the public service, the teaching service or the police force who—
 - (a) was before the commencement of section 10 of the **Parliamentary Superannuation Legislation (Reform) Act 2004** elected a member of Parliament; and
 - (b) ceases to be a member of Parliament at any time after the commencement of this Schedule without being entitled to a pension under the **Parliamentary Salaries and Superannuation Act 1968** or the Parliamentary Contributory Superannuation Act 1948 of the Commonwealth or any similar Act—

is entitled, on application in writing to the proper authority within 3 months after so ceasing to be a member of Parliament, to reinstatement in the public service, the teaching service or the police force (as the case requires) subject to the provisions in relation to classification, superannuation, sick leave and long service leave specified in subclause (3).

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- (2) A member of the public service, the teaching service or the police force who—
- (a) is on or after the commencement of section 10 of the **Parliamentary Superannuation Legislation (Reform) Act 2004** elected a member of Parliament; and
 - (b) ceases to be a member of Parliament within 5 years of that commencement without being entitled to a pension under the **Parliamentary Salaries and Superannuation Act 1968** or the Parliamentary Contributory Superannuation Act 1948 of the Commonwealth or any similar Act—

is entitled, on application in writing to the proper authority within 3 months after so ceasing to be a member of Parliament, to reinstatement in the public service, the teaching service or the police force subject to the provisions in relation to classification, superannuation, sick leave and long service leave specified in subclause (3).

- (3) The provisions are—
- (a) he or she must be re-employed in the public service, the teaching service or the police force in a classification, grade or office not inferior to that in which he or she was employed when he or she ceased to be employed in the public service, teaching service or police force by reason of his or her election as a member of Parliament;
 - (b) if immediately before he or she so ceased to be employed in the public service or the teaching service, he or she was a contributor under the **State Superannuation Act 1988**, he or she becomes a contributor under that Act if, on being re-employed in the public
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Sch. 1

service or the teaching service, he or she pays into the State Superannuation Fund under that Act an amount equal to—

- (i) the sum paid to him or her out of the State Superannuation Fund when he or she so ceased to be employed; and
- (ii) an additional amount equal to the contributions he or she would have been required to make under the **State Superannuation Act 1988** if he or she had remained in the public service or the teaching service during the period from so ceasing to be employed until re-employment in that service—

and on payment of that amount into the State Superannuation Fund he or she is to be treated for the purposes of the **State Superannuation Act 1988** as if he or she had continued to be a contributor under that Act during that period;

- (c) if immediately before he or she so ceased to be a member of the police force rateable deductions were being made under the **Police Regulation Act 1958**, on becoming a member of the police force again he or she becomes entitled to the same rights in respect of a pension as he or she would have had if he or she had not ceased to be a member of the police force if he or she pays into the Police Pensions Fund under that Act an amount equal to—
 - (i) the sum paid to him or her out of the Police Pensions Fund when he or she so ceased to be a member; and
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- (ii) an additional amount equal to the deductions that would have been made under that Act if he or she had remained a member of the police force during the period that he or she was not a member—

and on payment of that amount into the Police Pension Fund he or she is to be treated for the purposes of entitlement to a pension under the **Police Regulation Act 1958** as if he or she had continued to be a member of the police force during that period;

- (d) if immediately before he or she so ceased to be employed in the public service or the teaching service, he or she was a contributor under the **State Employees Retirement Benefits Act 1979**, he or she becomes a contributor under that Act if, on being re-employed in the public service or the teaching service, he or she pays into the State Superannuation Fund under that Act an amount equal to—
 - (i) the sum paid to him or her out of the State Superannuation Fund when he or she so ceased to be employed; and
 - (ii) an additional amount equal to the contributions he or she would have been required to make under the **State Employees Retirement Benefits Act 1979** if he or she had remained in the public service or the teaching service during the period from so ceasing to be employed until re-employment in that service—

and on payment of that amount into the State Superannuation Fund he or she is to be treated for the purposes of the **State**

Employees Retirement Benefits Act 1979

as if he or she had continued to be a contributor under that Act during that period;

- (e) if immediately before he or she so ceased to be employed in the public service he or she was a contributor under the **Emergency Services Superannuation Act 1986**, he or she becomes a contributor under that Act if, on being re-employed in the public service, he or she pays into the Scheme under that Act an amount equal to—
- (i) the sum paid to him or her out of that Scheme when he or she so ceased to be employed; and
 - (ii) an additional amount equal to the contributions he or she would have been required to make under the **Emergency Services Superannuation Act 1986** if he or she had remained in the public service during the period from so ceasing to be employed until re-employment in the public service—

and on payment of that amount into the Fund he or she is to be treated for the purposes of the **Emergency Services Superannuation Act 1986** as if he or she had continued to be a contributor under that Act during that period;

- (f) if immediately before he or she so ceased to be employed in the public service, he or she was a member under the **Transport Superannuation Act 1988**, he or she becomes a member under that Act if, on being re-employed in the public service, he or she pays into the State Superannuation Fund under that Act an amount equal to—

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- (i) the sum paid to him or her out of the State Superannuation Fund when he or she so ceased to be employed; and
 - (ii) an additional amount equal to the contributions he or she would have been required to make under the **Transport Superannuation Act 1988** if he or she had remained in the public service during the period from so ceasing to be employed until re-employment in the public service—
and on payment of that amount into the State Superannuation Fund he or she is to be treated for the purposes of the **Transport Superannuation Act 1988** as if he or she had continued to be a member under that Act during that period;
 - (g) upon re-employment in the public service, teaching service or police force he or she is to be credited with the amount of sick leave to which he or she was entitled on so ceasing to be employed;
 - (h) upon re-employment in the public service, teaching service or police force, a period from his or her ceasing to be employed in the public service, teaching service or police force until re-employment in the public service, teaching service or police force—
 - (i) is to be regarded for the purposes of any long service leave as continuous with service in the public service, teaching service or the police force;
 - (ii) is not in the computation of the period of long service leave to be counted as service with the public service or teaching service or in the police force.
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- (4) The provisions of this clause apply to and in relation to any person who—
- (a) before 24 March 1982 was a member of the teaching service within the meaning of section 3 of the **Teaching Service Act 1958**;
or
 - (b) before the commencement of section 19 of the **Teaching Service Act 1983**—
 - (i) was a member of the education service under the **Education Service Act 1981**;
or
 - (ii) was certified by the Secretary to the Department of Education to be employed in whole-time duties on the permanent staff of any school or schools for technical education receiving aid from the Consolidated Fund—

as if that person was a member of the teaching service as defined in clause 1.

- (5) For the purposes of this clause, if after the commencement of section 9 of the **Constitution (Parliamentary Reform) Act 2003**, a person becomes a member as a result of being chosen under section 27A of the **Constitution Act 1975** to fill a casual vacancy in the Legislative Council the person is taken to be elected a member of Parliament on the day that the person is chosen to fill the casual vacancy.

3 Return to employment of certain unsuccessful candidates

- (1) If the Governor in Council is satisfied that any person employed in the public service, the teaching service or the police force has (whether before or after the commencement of this Schedule)—

Sch. 1 cl. 3(1)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 33.3).

(a) resigned from the service or the force in order to contest any Commonwealth election for the Senate or the House of Representatives; and

(b) contested that election; and

(c) failed to be elected at that election—

the Governor in Council, despite anything in this Act, the **Education and Training Reform Act 2006** or the **Police Regulation Act 1958**, may, within two months after the declaration of the poll at that election, by Order published in the Government Gazette re-employ that person in the public service, the teaching service or the police force (as the case requires) at the same classification as he had immediately before his resignation.

- (2) If immediately before his or her resignation a person referred to in subclause (1) was an officer within the meaning of the **State Superannuation Act 1988**, he or she must be taken not to have ceased by reason of his or her resignation to be such an officer.
- (3) If immediately before his or her resignation a person referred to in subclause (1) was a person in respect of whom rateable deductions were being made under the **Police Regulation Act 1958**, he or she must be deemed not to have ceased by reason of his or her resignation to be such a person.
- (4) In subclause (1) a reference to the teaching service (where first occurring) includes a reference to the education service under the **Education Service Act 1981**.
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SCHEDULE 1A

SALARY SACRIFICE BY OFFICE HOLDERS

1 Definitions

(1) In this Schedule—

commencement day means the date of commencement of section 18 of the **Salaries Legislation Amendment (Salary Sacrifice) Act 2008**;

office holder means—

- (a) a prerogative officer holder appointed by the Governor in Council under section 88 of the **Constitution Act 1975**;
- (b) a person appointed to a public office whose remuneration is—
 - (i) fixed by the Act establishing the office;
 - (ii) fixed in the person's instrument of appointment or determined from time to time in accordance with that instrument;
 - (iii) fixed or determined by the Governor in Council (whether at the time of appointment or from time to time);
 - (iv) fixed by a Minister (whether at the time of appointment or from time to time);

relevant Minister in relation to an office holder means the Minister administering the Act under which the office holder is appointed;

remuneration includes salary or fee.

2 Application of Schedule

This Schedule does not apply to—

- (a) a judge or acting judge;
- (b) a magistrate or acting magistrate;
- (c) a master or Associate Judge of the Supreme Court;
- (d) a master or associate judge of the County Court;
- (e) a member of the Victorian Civil and Administrative Tribunal;
- (f) the Solicitor-General;
- (g) the Auditor-General;
- (h) the Director of Public Prosecutions;
- (i) the Chief Crown Prosecutor, an Acting Chief Crown Prosecutor, a Crown Prosecutor or an Associate Crown Prosecutor.

3 Salary sacrifice

- (1) An office holder may by notice in writing to the relevant Minister enter into an arrangement under which the office holder agrees to receive the whole or part of his or her total amount of future remuneration as non-salary benefits of an equivalent value.
- (2) The notice must specify a date from which the arrangement is to take effect which must be the date on which the notice is given or a later date.

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- (3) An office holder may vary or revoke a notice he or she has given under subclause (1) by notice in writing to the relevant Minister.
 - (4) The notice of variation or revocation must specify a date from which the variation or revocation is to take effect which must be the date on which the notice is given or a later date.
 - (5) In this clause, *non-salary benefits* means superannuation contributions or other benefits of a kind that could be the subject of a salary sacrifice arrangement under the rules or arrangements applying to salary sacrifice by an executive but does not include—
 - (a) superannuation contributions to a superannuation fund established by or under an Act unless that Act expressly authorises such an arrangement; or
 - (b) superannuation contributions to a superannuation fund unless—
 - (i) the fund will accept the contributions; and
 - (ii) the fund is a complying superannuation fund within the meaning of section 45 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth.
 - (6) For the purposes of this clause, in subclause (5) *non-salary benefits* includes any taxes, costs or charges associated with the salary sacrifice arrangement.
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4 Authorisation of past arrangements

- (1) This clause applies to an office holder who, before the commencement day, entered into an arrangement under which the office holder agreed to receive the whole or part of his or her total amount of remuneration as non-salary benefits of an equivalent value.
 - (2) An arrangement referred to in subclause (1), by virtue of this subclause, has and is deemed always to have had full effect according to its tenor as if it had been authorised under clause 3.
 - (3) On and after the commencement day, an arrangement referred to in subclause (1) may only be varied or revoked in accordance with clause 3.
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SCHEDULE 2

Section 116

SAVING AND TRANSITIONAL PROVISIONS

1 Definitions

In this Schedule—

commencement day means the day on which
Part 3 of the new Act comes into operation;

former Act means **Public Sector Management
and Employment Act 1998**;

new Act means **Public Administration Act 2004**.

2 General transitional provision

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a provision of the former Act continues to apply by force of this Schedule, any other provision of the former Act necessary to give effect to that continued provision also continues to apply in relation to that provision.

3 Existing public service staff

- (1) A person employed under Part 3 of the former Act immediately before the commencement day, or who by force of the former Act or any other Act is taken to be so employed, must, on that day, be taken to be employed under Part 3 of the new Act, with the same classification, duties and remuneration, and subject to the same industrial award or agreement or contract of employment, and with the same rights to leave of absence and accrued or accruing entitlements, as applied to the person or his or her employment under the former Act immediately before that day.

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- (2) A person employed under section 49 of the former Act immediately before the commencement day must, on that day, be taken to be employed under Division 1 of Part 6 of the new Act, with the same classification, duties and remuneration, and subject to the same agreement or contract, and with the same rights to leave of absence and accrued or accruing entitlements, as applied to the person or his or her employment under section 49 of the former Act immediately before that day.
 - (3) A person employed under section 50 of the former Act immediately before the commencement day must, on that day, be taken to be employed under Division 2 of Part 6 of the new Act, with the same classification, duties and remuneration, and subject to the same agreement or contract, and with the same rights to leave of absence and accrued or accruing entitlements, as applied to the person or his or her employment under section 50 of the former Act immediately before that day.
 - (4) A person employed under Part 9 of the former Act immediately before the commencement day must, on that day, be taken to be employed under Division 3 of Part 6 of the new Act, with the same classification, duties and remuneration, and subject to the same agreement or contract, and with the same rights to leave of absence and accrued or accruing entitlements, as applied to the person or his or her employment under Part 9 of the former Act immediately before that day.
 - (5) A person on probation under the former Act immediately before the commencement day continues on probation under the new Act for the balance of the probation period.

- (6) The repeal of the former Act does not prevent any of the terms and conditions of employment of a person holding an office or position or employed in the public service under the former Act, or employed under Part 8 or 9 of the former Act, immediately before the commencement day from being altered by or under any law, award or agreement with effect from any time after that day.
- (7) Except as otherwise provided by this Schedule, the new Act applies to a person who is taken by virtue of a provision of this clause to be employed under a Part, or Division of a Part, of the new Act in the same way as it applies to persons actually employed under that Part or Division.

4 Vacancies

Any process to fill a vacancy begun under the former Act but not completed at the commencement day may be continued and completed in accordance with that Act.

5 Public service structure

- (1) Departments under the former Act with titles corresponding to the titles of Departments in an Order made under section 10 of the new Act and in force on the commencement day must be taken to be those Departments on the commencement day.
- (2) Administrative Offices under the former Act with titles corresponding to the titles of Administrative Offices in an Order made under section 11 of the new Act and in force on the commencement day must be taken to be those Administrative Offices on the commencement day.

6 Commissioner for Public Employment

- (1) On the commencement day the person holding office as Commissioner for Public Employment under Part 5 of the former Act goes out of office.
- (2) A Code of Conduct published by the Commissioner for Public Employment under section 37(1)(a) of the former Act and in force immediately before the commencement day continues to apply to any person or body to which it applied immediately before that day as if it were a code of conduct issued by the Public Sector Standards Commissioner under section 63(1) of the new Act until superseded by a code issued under that section of the new Act and applicable to that person or body.
- (3) Directions issued by the Commissioner for Public Employment under section 37(1)(b) of the former Act and in force immediately before the commencement day continue to apply to any person or body to which they applied immediately before that day as if they were standards issued by the Public Sector Standards Commissioner under section 66(2) of the new Act until superseded by standards issued under that section of the new Act.

7 Superseded references

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act or a provision of an Act amended by the new Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to, or a reference that by force of any Act must be read as a reference to, the Public Employment Minister must be read as a reference to the Premier;

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- (b) a reference to, or a reference that by force of any Act must be read as a reference to, the Commissioner for Public Employment must be read as a reference to the State Services Authority;
 - (c) a reference to the **Public Service Act 1958**, the **Public Service Act 1974**, the **Public Sector Management Act 1992** or the former Act must be read as a reference to the new Act;
 - (d) a reference to an Administrative Unit (except one specified in Schedule Three A to the **Public Service Act 1974**) must be read as a reference to a Department;
 - (e) a reference to an Administrative Unit specified in Schedule Three A to the **Public Service Act 1974** must be read as a reference to an office specified in section 16(1) of the new Act;
 - (f) a reference to an Associated Administrative Unit must be read as a reference to an Administrative Office;
 - (g) a reference to the Chief Administrator (of an Administrative Unit) must be read as a reference to a Department Head;
 - (h) a reference to a Chief Administrator (of an Associated Administrative Unit) must be read as a reference to an Administrative Office Head;
 - (i) a reference to a person performing the functions of a Department Head in relation to an Administrative Office must be read as a reference to an Administrative Office Head;
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- (j) a reference to an Agency Head within the meaning of the former Act must be read as a reference to a public service body Head within the meaning of the new Act;
 - (k) a reference to section 16 of the former Act must be read as a reference to section 16 of the new Act;
 - (l) a reference to an authority within the meaning of section 47(1) of the former Act must be read as a reference to an authority within the meaning of section 104(1) of the new Act;
 - (m) a reference to an office or position (in relation to the public service) must be read as a reference to employment under Part 3 of the new Act;
 - (n) a reference to an officer, employee, fixed term employee, temporary employee, casual employee or cadet (in the public service) must be read as a reference to an employee under Part 3 of the new Act.

8 Re-employment in public sector

The repeal of the **Public Sector Reform (Miscellaneous Amendments) Act 1998** does not affect the continued application, by force of clause 8 of Schedule 2 to that Act, of a provision of Part 9 of the **Public Sector Management Act 1992** to any person to whom it applied immediately before the commencement day within the meaning of that Schedule (whether by reason of a provision of the **Public Sector Management Act 1992** or of any other Act) in respect of an office, position or employment held by that person immediately before that day as if it had not been repealed.

9 Personal grievances and discipline

Any process, review or inquiry begun under the former Act but not completed at the commencement day may be continued and completed in accordance with that Act.

10 Compulsory retirement

Any action begun under section 34 of the former Act in relation to an employee but not completed at the commencement day may be continued and completed in accordance with that Act.

11 Leave

The repeal of the **Public Sector Reform (Miscellaneous Amendments) Act 1998** does not affect the continued application, by force of clause 11 of Schedule 2 to that Act, of Schedule 4 to the **Public Sector Management Act 1992**, as in force immediately before the commencement day within the meaning of that Schedule 2 to that Act, to officers of the Parliament as defined in the **Parliamentary Officers Act 1975** as if references in that Schedule to the appropriate Department Head were references to the relevant authority as defined in that Act.

12 Continuing application of repealed provision

Clause 1(c) of Schedule 1 to the **Employee Relations Act 1992** as continued in effect by the Workplace Relations Act 1996 of the Commonwealth applies in relation to employees, Ministerial officers, Parliamentary advisers and judicial employees as if any reference to an award were a reference to a provision referred to in clause 22(1) of Schedule 6 to the **Public Sector Management Act 1992**.

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13 Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006

Sch. 2 cl. 13
inserted by
No. 80/2006
s. 14.

The amendment of this Act made by section 12 of the **Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006** does not affect any contract or arrangement for the supply of goods or services, or for the management or disposal of goods, entered into by the Authority before the commencement of that section.

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Sch. 3
amended by
No. 20/2005
s. 50,
repealed by
No. 80/2006
s. 24(6).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 16 November 2004

Legislative Council: 7 December 2004

The long title for the Bill for this Act was "to provide a framework for good governance in the Victorian public sector and in public administration generally in Victoria, to establish a State Services Authority, to repeal the **Public Sector Management and Employment Act 1998** and the **Public Sector Reform (Miscellaneous Amendments) Act 1998**, to amend the **Constitution Act 1975** and the **Parliamentary Officers Act 1975**, to make consequential amendments to certain other Acts and for other purposes."

The **Public Administration Act 2004** was assented to on 21 December 2004 and came into operation as follows:

Sections 1, 2 and Part 9 (sections 118–127) on 21 December 2004: Special Gazette (No. 275) 21 December 2004 page 3; sections 3–6, 37–44 on 4 April 2005; sections 7–36, 45–74, 98–117, Schedules 1–3 on 5 April 2005; Part 5 (sections 75–97) on 1 July 2005: Government Gazette 31 March 2005 page 602.

2. Table of Amendments

This Version incorporates amendments made to the **Public Administration Act 2004** by Acts and subordinate instruments.

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(2) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Parliamentary Administration Act 2005, No. 20/2005

Assent Date: 24.5.05
Commencement Date: S. 50 on 21.12.04: s. 2(2); ss 47–49, 52(1)(2) on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Courts Legislation (Miscellaneous Amendments) Act 2005, No. 30/2005

Assent Date: 21.6.05
Commencement Date: S. 11(1) on 5.4.05: s. 2(2); s. 11(2) on 12.12.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Commissioner for Law Enforcement Data Security Act 2005, No. 84/2005

Assent Date: 29.11.05
Commencement Date: S. 19 on 1.7.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Disability Act 2006, No. 23/2006

Assent Date: 16.5.06
Commencement Date: S. 247 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 33) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 32) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Public Administration Act 2004
No. 108 of 2004

Endnotes

Charter of Human Rights and Responsibilities Act 2006, No. 43/2006

Assent Date: 25.7.06
Commencement Date: S. 47(Sch. item 5) on 1.1.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 11 on 4.4.05: s. 2(2); ss 3, 4, 7–10, 12–14, 24 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 55) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Education and Training Reform Miscellaneous Amendments Act 2007, No. 58/2007

Assent Date: 27.11.07
Commencement Date: S. 54(1)(2) on 1.7.07: s. 2(2); s. 54(3) on 28.11.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 28) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

Salaries Legislation Amendment (Salary Sacrifice) Act 2008, No. 83/2008

Assent Date: 11.12.08
Commencement Date: Ss 18, 19 on 11.12.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Administration Act 2004**

3. Explanatory Details

No entries at date of publication.