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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. **Purpose**
   
The purpose of this Act is to provide for the management of the Victorian public sector.

2. **Commencement**
   
   (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
(2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in sub-section (2) does not come into operation before 1 January 1999, it comes into operation on that day.

3. **Objects**

The objects of this Act are—

(a) further to enable Victorian public sector employees to be brought under the general industrial framework established by the Workplace Relations Act 1996 of the Commonwealth on a similar footing to employees in the private sector;

(b) to promote among public sector employees a spirit of service to the community;

(c) to emphasise the principles of merit, responsible management, management competence and efficiency within the Victorian public sector;

(d) to maintain appropriate standards of integrity and conduct for employees in the Victorian public sector.

4. **Definitions**

(1) In this Act—

"**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;
"Agency" means—
   (a) a Department; or
   (b) an Administrative Office;

"Agency 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;

"appropriate Agency Head" means—
   (a) in relation to an Agency—the Agency Head; or
   (b) in relation to an employee—the Head of the Agency to which that employee belongs;

"Agency Minister" means—
   (a) in relation to an Agency—the Minister responsible for the relevant part of that Agency; or
   (b) in relation to an employee—the Minister responsible for the relevant part of the Agency to which that employee belongs;

"Commissioner for Public Employment" means Commissioner for Public Employment appointed under Part 5;

"declared authority" means an authority specified in an Order made under section 47(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;

"designated employee" means designated employee for the purposes of section 29;

"employee" means a person employed under Part 3 in any capacity and includes an Agency Head;

"executive" means a person employed under Part 3 as an Agency Head or other executive;

"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 authority" has the meaning given in section 5;

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

"Public Employment Minister" means the responsible Minister of the Crown for the time being administering this Act;

"public sector" means the public service and all public authorities;
"public sector employee" means—
(a) an employee; or
(b) a person employed by a public authority;

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

"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.

(2) In this Act—
(a) a reference to a function includes a reference to a power, authority and duty; and
(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

5. What are public authorities?

(1) For the purposes of this Act a public authority is a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose.

(2) The Governor in Council may, by Order published in the Government Gazette, declare a body described in sub-section (1) not to be a public authority for the purposes of this Act.

(3) A public authority does not include—
(a) a Council within the meaning of, or any other body or committee established under, the Local Government Act 1989; or
(b) the Municipal Association of Victoria established under the Municipal Association Act 1907; or

(c) a body that is declared by an Order under sub-section (2) not to be a public authority for the purposes of this Act.

6. **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) the Solicitor-General;

(g) 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;

(h) a person under the Police Regulation Act 1958;

(i) an officer of the Parliament within the meaning of the Parliamentary Officers Act 1975.

(2) Sub-section (1) does not prevent a person referred to in that sub-section from having or exercising any functions of an Agency Head.
PART 2—PRINCIPLES

7. Public sector employment principles

Agency Heads and public authority Heads must establish employment processes that will ensure that—

(a) employment decisions are based on merit; and

(b) employees are treated fairly and reasonably; and

(c) equal employment opportunity is provided; and

(d) employees have a reasonable avenue of redress against unfair or unreasonable treatment.

8. Public sector conduct principles

(1) Public sector employees must in the course of their employment—

(a) act impartially; and

(b) act with integrity including avoiding real or apparent conflicts of interest; and

(c) accept accountability for results; and

(d) provide responsive service.

(2) Nothing in sub-section (1)(c) affects the granting of an indemnity to a public sector employee in respect of any liability or limits the effect of—

(a) any such indemnity, whether granted before or after the commencement of this section; or
Public Sector Management and Employment Act 1998
Act No. 45/1998

(b) any immunity conferred on a public sector employee by or under any Act, whether before or after that commencement.
PART 3—PUBLIC SERVICE OF VICTORIA

Division 1—Structure

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

Division 2—Agencies

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.

Division 3—Agency Heads

12. Agency Heads
(1) Each Department shall have a Department Head and each Administrative Office shall have an Administrative Office Head.
(2) Subject to sub-section (3), the Public Employment Minister, 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 Agency 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 Agency 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.

(2) Sub-section (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) An Agency 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 Agency Head**

(1) Despite anything to the contrary in this Act, the following office holders have all the functions of an Agency Head in relation to employees in the following offices—

(a) the Auditor-General in relation to the Victorian Auditor-General's Office;

(b) the Solicitor for Public Prosecutions in relation to the Office of Public Prosecutions;

(c) the Electoral Commissioner in relation to the Victorian Electoral Commission;

(d) the Chief Commissioner of Police in relation to the office of the Chief Commissioner of Police;

(e) the Ombudsman in relation to the office of the Ombudsman;

(f) the Commissioner for Public Employment in relation to the Office of the Commissioner for Public Employment;

(g) the Regulator-General in relation to the Office of the Regulator-General;

(h) the Legal Ombudsman in relation to the office of the Legal Ombudsman.
(2) This Act (except section 17) applies to an office specified in sub-section (1) as if any reference in this Act to—

(a) an Agency or the public service were a reference to that office; and

(b) an Agency Head were a reference to the office holder.

17. Performance review of Agency Heads

(1) The Commissioner for Public Employment must, at the direction of the Public Employment Minister, review the performance of an Agency Head, either generally or in respect of a particular matter.

(2) In carrying out his or her functions under sub-section (1), the Commissioner for Public Employment must report to the Public Employment Minister on the manner and extent to which the Agency Head is fulfilling all of the requirements imposed on him or her, whether under this Act or otherwise.

18. Delegation

(1) An Agency 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 sub-section (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 Agency Head

(1) The Public Employment Minister may assign any person to act as an Agency Head if no-one is currently employed as that Agency Head or the person so employed is suspended from duty or is sick or absent.

(2) A person, while acting as an Agency Head, has all the functions of the Agency Head but is not, only because of that assignment, to be taken to be an executive for the purposes of this Act.

(3) The Public Employment Minister may, at any time, terminate the assignment of a person as an Agency Head.

Division 4—Employees

20. Employer powers of Agency Heads

(1) An Agency Head, on behalf of the Crown, has all the rights, powers, authorities and duties of an employer in respect of the Agency and employees in it.

(2) Without limiting sub-section (1), the appropriate Agency Head—

(a) may employ as many persons as are required for the exercise of the functions of the Agency;

(b) may assign work to employees;

(c) may issue instructions that must be observed by employees;
(d) may determine (with the approval of the Public Employment Minister 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 Agencies or in public authorities;

(g) may suspend employees from duty with pay;

(h) may terminate the employment of employees;

(i) may cause employees to be retired;

(j) may second employees to other bodies or take persons on secondment from other bodies;

(k) may authorise periods of leave of absence for employees or make payments to employees in lieu of leave.

(3) An Agency Head, in exercising a right, power, authority or duty referred to in this section, must do so in conformity with—

(a) directions issued by the Commissioner for Public Employment under section 37(1)(b); and

(b) the employment principles set out in section 7; and

(c) the conduct principles set out in section 8; and

(d) any other relevant provisions of this Act.
Division 5—Executives

21. 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 sub-section (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 sub-section (1)(d).

(4) If a person ceases to be an executive because of an Order made under sub-section (3), the person's employment by the declared authority is not thereby terminated.

(5) An Order made under sub-section (1)(d) or (3) may contain provisions of a savings or transitional nature consequent on a person becoming or ceasing to be an executive.
22. 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 an Agency Head—the Public Employment Minister;

(b) in the case of any other executive employed under Part 3—the appropriate Agency Head;

(c) in the case of an executive referred to in section 21(1)(b) or (c)—the person or body specified in an Order made under section 47(2)(b) as having the functions of an Agency 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 21(1)(d) to be the employer of the executive.

23. 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.

(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.

(6) However, the term of a contract of employment may not be increased beyond 5 years.

(7) 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.

(8) 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.

24. 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 sub-section (1) is entitled to be offered a contract of employment.

(3) The employment or appointment of a person referred to in sub-section (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.

(4) However, a person continuing as mentioned in sub-section (3) ceases to be entitled to any performance-related incentive payments.

(5) This section does not apply to a person to whom it otherwise would apply because of the making of an Order under section 21(1)(d) if that Order specifies that it is not to apply.

**Division 6—Transfer of Employees**

**25. Transfer directed by Agency Head**

(1) If the appropriate Agency 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 Agency or of the public authority concerned, transfer an employee to duties in another Agency or in a public authority on his or her existing terms and conditions of employment.

(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.

**26. Transfer of Agency Head to other duties**

(1) If the Public Employment Minister considers it to be in the interests of the public sector to do so, he or she may, after consulting the Commissioner for Public Employment, transfer an Agency Head to other duties in that Agency or another Agency or in a public authority on his or her existing terms and conditions of employment.

(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.
27. Machinery of government transfers

(1) On the transfer of a function from one Agency to another or to a public authority, whether or not the first Agency ceases to exist, the Public Employment Minister 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 Agency or in the public authority concerned on his or her existing terms and conditions of employment.

(2) On the making of a declaration under sub-section (1), the transfer is deemed to take place.

(3) A declaration under sub-section (1) may be made in respect of an individual employee or a group of employees.

(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.

28. Transfer, etc. does not affect employment continuity

A transfer or other movement of an employee to other duties in an Agency or to duties in another Agency, 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—Designated Employees

29. Employment offers to designated employees

(1) The Governor in Council may, by Order published in the Government Gazette, declare for the purposes of this section—

(a) an organisation or body to be a designated body; or

(b) an employee to be a designated employee; or

(c) a group of employees to be designated employees.

(2) If a designated body makes an offer of employment to a designated employee, the designated employee must, within 14 days after receipt of the offer, elect in writing to accept or reject it.

(3) A designated employee who elects to accept an offer must resign from the public service before commencing the new employment.

(4) Despite anything to the contrary in any contract of employment or other agreement, if the appropriate Agency Head and the designated body so agree, on the commencement by a designated employee of employment offered in accordance with this section—

(a) the designated employee retains any accrued entitlement to long service, annual or sick leave; and

(b) the designated body becomes responsible for any payment in respect of that leave in lieu of the person previously responsible; and

(c) the designated employee is not entitled to payment in respect of that leave on resigning from the public service.
(5) Nothing in this section affects any entitlement of a designated employee to payment in respect of accrued long service or annual leave on resignation from the public service if an agreement is not entered into under sub-section (4).

Division 8—General

30. 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 sub-section (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.
PART 4—TERMINATION AND RETIREMENT

31. Termination of employment (non-executives)

(1) The appropriate Agency 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 of Part 3; 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 Agency Head is satisfied that the employee is inefficient or incompetent in the discharge of his or her duties; or

(f) if the Agency Head is satisfied that the employee has abandoned his or her employment; or

(g) if the Agency Head is satisfied that the employee has, in connection with his or her application for employment, given false or misleading information; or

(h) in the case of a designated employee, in accordance with section 33; or

(i) for any other reason consistent with the terms and conditions of his or her employment.

(2) A power of an Agency Head referred to in subsection (1) must be exercised as set out in section 20(3).
32. Termination of employment (executives)

(1) The appropriate Agency Head or, if the executive is an Agency Head, the Public Employment Minister, 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 an Agency Head, the Governor in Council may at any time remove an Agency Head from office and, on that removal, his or her contract of employment is terminated.

(3) A power of an Agency Head referred to in sub-section (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) Sub-section (1) does not apply to the Official Secretary.

33. Termination of employment (designated employees)

(1) The appropriate Agency Head may terminate the employment of a designated employee who elects not to accept an offer of employment from a
designated body or fails to make an election within the required time.

(2) Before acting under sub-section (1) the appropriate Agency Head must certify in writing to the designated employee—

(a) that he or she is satisfied that the employment offer was comparable with the designated employee's current public service duties; and

(b) that the designated employee cannot be successfully transferred to other similar duties in that or any other Agency or in a public authority.

(3) If a designated employee who is an executive has in his or her current contract of employment made an election referred to in section 64(1) of the Public Sector Management Act 1992 (right of return to public sector), then—

(a) on the termination of the designated employee's employment, that right of return is cancelled; and

(b) he or she is entitled to be refunded any amount paid by him or her under that contract in respect of that right.

34. Retirement

(1) An employee may retire from the public service on reaching the age of 55 years.

(2) The appropriate Agency Head may cause an employee to be retired if satisfied that the employee is incapable of performing the duties of his or her employment on account of physical or mental incapacity.
(3) The Public Employment Minister may cause an Agency Head to be retired if satisfied that he or she is incapable of performing the duties of his or her employment on account of physical or mental incapacity.

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) Sub-section (1) is subject to any relevant—

(a) award or agreement under, or continued in force by, the Workplace Relations Act 1996 of the Commonwealth; and

(b) contract of employment; and

(c) directions that may be issued by the Public Employment Minister.
PART 5—COMMISSIONER FOR PUBLIC EMPLOYMENT

36. Establishment

There shall be a Commissioner for Public Employment for the purposes of this Act.

37. Functions

(1) The functions of the Commissioner for Public Employment are—

(a) to promote the principles set out in sections 7 and 8 (public sector employment and conduct principles) including by preparing and publishing a Code of Conduct applicable throughout the public sector;

(b) subject to section 39, to establish and issue written directions concerning the application of those principles;

(c) to require Agency Heads and public authority Heads to provide to him or her information on the application of those principles to the Agency or public authority;

(d) any other functions given either by the Public Employment Minister or by or under this or any other Act.

(2) The Commissioner must, in respect of each year ending 30 June, prepare an annual report on—

(a) his or her operations during the year; and

(b) the application of the principles of public sector employment and public sector conduct in the public sector during the year—

and submit the report to the Public Employment Minister not later than 31 October next following.

(3) The Public Employment Minister must cause each annual report submitted to him or her under this
section to be laid before each House of Parliament within 7 sitting days after receiving it.

38. Duty to act independently

The Commissioner for Public Employment must act independently in relation to the performance of his or her functions.

39. Scope of directions

(1) Directions by the Commissioner for Public Employment under section 37(1)(b) may be established and issued—

(a) so as to apply—

(i) throughout the whole of the public service; or

(ii) in a specified part of the public service; or

(iii) if this provision applies in relation to a particular declared authority, to that authority; or

(b) so as to provide in a specified case or class of case for the exemption of people or things or a class of people or things from any of the provisions of the directions.

(2) An exemption under sub-section (1)(b) may be provided—

(a) unconditionally or on specified conditions;

(b) wholly or to a specified extent.

(3) An Agency Head or public authority Head or public sector employees in complying with the principles set out in section 7 or 8 must do so in conformity with any directions issued by the Commissioner under section 37(1)(b) that apply to the Agency or public authority.
40. Parliamentary scrutiny of directions

(1) The Commissioner for Public Employment must cause a notice of the issue of directions under section 37(1)(b) to be published in the Government Gazette as soon as practicable after their issue.

(2) Section 15 and Part 5 of the Subordinate Legislation Act 1994 apply to directions issued under section 37(1)(b) as if they were a statutory rule within the meaning of that Act, notice of the making of which had been published in the Government Gazette on the day on which the notice under sub-section (1) was so published.

41. Delegation

The Commissioner for Public Employment may, by instrument, delegate to any person any of his or her functions, other than this power of delegation.

42. Terms and conditions of office

(1) The Commissioner for Public Employment shall be appointed by the Governor in Council.

(2) The Commissioner holds office for a term of 5 years but is eligible for re-appointment.

(3) The Governor in Council may specify other terms and conditions of appointment (including remuneration) in the instrument of appointment.

(4) The Governor in Council may suspend the Commissioner from office.

(5) The Public Employment Minister must cause to be laid before both Houses of Parliament a full statement of the grounds for the suspension.

(6) 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.
(7) The Governor in Council shall remove the 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.

(8) The Governor in Council shall remove the suspension and restore the Commissioner to office unless each House makes a declaration of the kind, and within the time, specified in sub-section (7).

(9) The Commissioner can only be removed from office in accordance with this section.
PART 6—FUNCTIONS OF PUBLIC EMPLOYMENT MINISTER

43. Functions of Public Employment Minister

(1) The Public Employment Minister has the function of—

(a) securing the overall effectiveness and efficiency of the public sector; and

(b) reviewing management effectiveness and efficiency in the public sector; and

(c) facilitating continuous improvement in the leadership and management of public sector employees.

(2) The Public Employment Minister may direct a person to conduct a special inquiry into any matter relating to an Agency, prescribed office or public authority.

(3) The Public Employment Minister may require an Agency Head or public authority Head to provide to him or her information, including statistical information, on employment practices and procedures within the Agency or public authority.

(4) The Public Employment Minister may, by instrument, delegate to any person any of his or her functions under this Act, other than this power of delegation.

44. Powers of persons conducting special inquiries

(1) A person conducting a special inquiry may enter the premises of any Agency, prescribed office or public authority in connection with the inquiry.

(2) Sections 14, 15, 16 and 21A of the Evidence Act 1958 apply to a person conducting a special inquiry as if he or she were a Board or the
Chairman of a Board appointed by the Governor in Council.

45. 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.

46. Reports of special inquiries

(1) The person conducting a special inquiry must—
   (a) within the period required by the Public Employment Minister, 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 Public Employment Minister and the Agency Minister or Minister responsible for the public authority, as the case requires.

(2) The Agency Minister or Minister responsible for the public authority must cause a copy of the report, together with information as to any action taken or proposed to be taken in relation to the subject-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.
PART 7—DECLARED AUTHORITIES

47. What are declared authorities?

(1) In this section "authority" means—

(a) a public authority; or

(b) a statutory office; or

(c) any group of people employed in the service of the Crown; or

(d) any State owned enterprise within the meaning of the State Owned Enterprises Act 1992; or

(e) a prerogative office.

(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 an Agency 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 sub-section (2) in relation to—

(a) a person referred to in section 6(1), except an Assistant Commissioner of Police; or

(b) a State owned enterprise, except at the request of the Minister responsible for it; or

(c) a public authority specifying that section 39(1)(a)(iii) is to apply to it, except after consultation between the Public Employment Minister and the Minister responsible for the public authority; or
(d) an office specified in section 16(1); or

(e) 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.

48. 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 47(2) in relation to that authority.

(2) A reference in a provision of this Act applying in relation to a declared authority to—

(a) an Agency or the public service, is to be taken to be a reference to the declared authority; and

(b) an Agency Head, is to be taken to be a reference to the person specified in the Order as having the functions of an Agency 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—MINISTERIAL OFFICERS AND PARLIAMENTARY ADVISERS

49. Employment of Ministerial officers

(1) Subject to the directions of the Premier in respect of conditions of employment and termination of employment, a Minister may employ any person as a Ministerial officer for a term, not exceeding 4 years, 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 shall, for the purposes of the State Superannuation Act 1988, be deemed to be on leave of absence with pay for the duration of that appointment.

50. 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 may employ any person as a Parliamentary adviser for a term, not exceeding 4 years, specified in the person's contract of employment.

(2) If an employee who is on leave of absence without pay is appointed as a Parliamentary adviser, he or she shall, for the purposes of the State Superannuation Act 1988, be deemed to be on leave of absence with pay for the duration of that appointment.
PART 9—JUDICIAL EMPLOYEES

51. Judicial employees
   
   In this Part "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.

52. Employment of judicial employees
   
   (1) The appropriate Agency Head may employ any person as a judicial employee.
   
   (2) The employment principles set out in section 7 apply to the employment of judicial employees.

53. Termination of employment as judicial employee
   
   (1) The employment of a judicial employee may be terminated at any time by the appropriate Agency Head giving the employee, or the employee giving that Agency Head, notice of termination in accordance with sub-section (2).
   
   (2) The notice must be—
   
   (a) 4 weeks notice of termination; or
   
   (b) any other period of notice agreed between the Agency Head and the employee.
   
   (3) A person who was an employee immediately before his or her employment under this Part, 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 an Agency immediately before his or her employment under
this Part is deemed, on the termination of his or her employment as a judicial employee, to be re-employed in that Agency on the same terms and conditions as before his or her employment under this Part.

(5) A judicial employee is not entitled to compensation as a result of the termination of his or her employment under this Part.

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PART 10—MISCELLANEOUS PROVISIONS

54. Delegation by Agency Minister

The Agency Minister may, by instrument, delegate to any person any of his or her functions under this Act, other than this power of delegation.

55. Performance 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 performed by any other person in that service whom the Agency Minister directs to do so while—

(a) the person with the function is unable (whether because of illness, absence or otherwise) to perform it; or

(b) no-one is employed to perform it.

(2) A person performing a function under sub-section (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 performance of the function, all the powers of the person for whom he or she is acting.

56. 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 Commissioner for Public Employment, an Agency 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.
57. Regulations

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.
NOTES

† Minister's second reading speech—
  Legislative Assembly: 23 April 1998
  Legislative Council: 19 May 1998

The long title for the Bill for this Act was "to provide for the management of the Victorian public sector and for other purposes."