

**Authorised Version No. 045**  
**Public Administration Act 2004**

**No. 108 of 2004**

Authorised Version incorporating amendments as at  
17 September 2014

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17 September 2014

**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 the Victorian Public Sector Commission.

S. 1(b)  
amended by  
No. 24/2009  
s. 37(1),  
substituted by  
No. 6/2014  
s. 3.

\* \* \* \* \*

S. 1(c)  
substituted by  
No. 80/2006  
s. 4(1),  
repealed by  
No. 24/2009  
s. 37(2).

\* \* \* \* \*

S. 1(d)  
substituted by  
No. 80/2006  
s. 4(1),  
repealed by  
No. 24/2009  
s. 37(3).

\* \* \* \* \*

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repealed by  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;

S. 3(da)  
inserted by  
No. 80/2006  
s. 4(2),  
repealed by  
No. 24/2009  
s. 37(4).

\* \* \* \* \*

- (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;

\* \* \* \* \*

S. 4(1) def. of *Authority* repealed by No. 6/2014 s. 4(a).

**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;

**Chief Executive Officer of Court Services Victoria** means the person holding the office or performing the duties of the Chief Executive Officer of Court Services Victoria;

S. 4(1) def. of *Chief Executive Officer of Court Services Victoria* inserted by No. 1/2014 s. 59(b).

**code of conduct** means a code of conduct issued under section 61;

S. 4(1) def. of *code of conduct* amended by No. 6/2014 s. 4(b).

**Commission** means the Victorian Public Sector Commission established under section 37;

S. 4(1) def. of *Commission* inserted by No. 6/2014 s. 4(f).

**Commissioner** means the Victorian Public Sector Commissioner appointed under section 43;

S. 4(1) def. of *Commissioner* inserted by No. 6/2014 s. 4(f).

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

***corrupt conduct*** has the meaning given in section 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 4(1) def. of *corrupt conduct* inserted by No. 82/2012 s. 177, amended by No. 82/2012 s. 317(a).

***Councillor*** has the same meaning as it has in section 3(1) of the **Local Government Act 1989**;

S. 4(1) def. of *Councillor* inserted by No. 6/2014 s. 4(f).

***Court Chief Executive Officer*** means a person holding the office or performing the duties of a Court Chief Executive Officer under the **Court Services Victoria Act 2014**;

S. 4(1) def. of *Court Chief Executive Officer* inserted by No. 1/2014 s. 59(b).

***Court Services Victoria*** means Court Services Victoria established under section 5 of the **Court Services Victoria Act 2014**;

S. 4(1) def. of *Court Services Victoria* inserted by No. 1/2014 s. 59(b).

***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
- (ca) Court Services Victoria; or
- (d) the Office of Public Prosecutions or the Director's Committee within the meaning of the **Public Prosecutions Act 1994**;
- (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;

*exempt body official* means—

- (a) a person employed by an exempt body; or

S. 4(1) def. of *exempt body* amended by Nos 24/2006 s. 6.1.2(Sch. 7 item 33.1), 3/2012 s. 26, 1/2014 s. 59(a).

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

***IBAC*** means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 4(1) def. of *IBAC* inserted by No. 82/2012 s. 177, amended by No. 82/2012 s. 317(b).

***IBAC personnel*** has the same meaning as it has in the **Victorian Inspectorate Act 2011**;

S. 4(1) def. of *IBAC personnel* inserted by No. 82/2012 s. 177.

***misconduct*** includes—

S. 4(1) def. of *misconduct* inserted by No. 27/2009 s. 3.

- (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) a refusal by an employee to perform duties assigned to the employee under Part 3 or Part 7A;
- (e) an employee making improper use of his or her position for personal gain;
- (f) 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;

*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);

*police officer* has the same meaning as in the **Victoria Police Act 2013**;

S. 4(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 135.1(a)).

*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;

S. 4(1) def. of *prescribed office* amended by No. 37/2014 s. 10(Sch. item 135.1(b)).

*prescribed office* means an office or body 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;

S. 4(1) def. of *public official* amended by Nos 20/2005 s. 52(1), 77/2008 s. 129(Sch. 2 item 20.1).

*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;

(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 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 Victorian Public Sector Commission;

***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 Victorian Public Sector Commission—the Victorian Public Sector Commissioner;

***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;

S. 4(1) def. of ***public service body*** amended by No. 6/2014 s. 4(c).

S. 4(1) def. of ***public service body Head*** amended by No. 6/2014 s. 4(d).

**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 62(1);

S. 4(1) def. of *standard* amended by No. 6/2014 s. 4(e).

**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 in the **Victoria Police Act 2013**.

S. 4(1) def. of *Victoria Police* substituted by No. 37/2014 s. 10(Sch. item 135.1(c)).

- 
- (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—

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

- (i) has written terms of reference guiding its operation; and
- (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
- (e) an exempt body; or
- (f) a special body in its capacity as a special body; or
- (g) a registered 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.

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

S. 5(1)(g)  
amended by  
No. 79/2008  
s. 21.

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

S. 5(1A)(a)  
substituted by  
Nos 24/2006  
s. 6.1.2(Sch. 7  
item 33.2(a)),  
58/2007  
s. 54(1),  
amended by  
No. 76/2013  
s. 26.

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

S. 5(1B)  
inserted by  
No. 6/2014  
s. 19.

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

(a) the board of a TAFE institute within the meaning of the **Education and Training Reform Act 2006**;

(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**.

(1B) For the purposes of this Act, a body that would be a subsidiary, within the meaning of the Corporations Act, of a public entity if both the body and the public entity were bodies corporate to which that Act applies, is also a public entity.

(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;

S. 6(1)(aa) inserted by No. 66/2011 s. 43(1).

- (aa) the IBAC within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 6(1)(ab) inserted by No. 79/2012 s. 83(1).

- (ab) the Commission for Children and Young People within the meaning of the **Commission for Children and Young People Act 2012**;

- (b) the Electoral Boundaries Commission;

S. 6(1)(ba) inserted by No. 84/2005 s. 19, repealed by No. 60/2014 s. 140(Sch. 3 item 38.1(a)).

\* \* \* \* \*

- (c) the office of the Health Services Commissioner;

- (d) the office of the Ombudsman;

S. 6(1)(e) repealed by No. 82/2012 s. 165(1).

\* \* \* \* \*

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|--|---|
| (f) the office of the Commissioner for Privacy and Data Protection;  | S. 6(1)(f) substituted by No. 60/2014 s. 140(Sch. 3 item 38.1(b)).  |
| (g) the office of the Freedom of Information Commissioner;   | S. 6(1)(g) repealed by No. 77/2008 s. 129(Sch. 2 item 20.2), new s. 6(1)(g) inserted by No. 6/2012 s. 50. |
| (ga) the Mental Health Complaints Commissioner;  | S. 6(1)(ga) inserted by No. 26/2014 s. 455(Sch. item 24.1).   |
| (gb) the Mental Health Tribunal;   | S. 6(1)(gb) inserted by No. 26/2014 s. 455(Sch. item 24.1).   |
| (h) VCAT;  |   |
| (i) the Victorian Auditor-General's Office;  |   |
| (j) the Victorian Electoral Commission;  |   |
| (ja) the Victorian Inspectorate within the meaning of the <b>Victorian Inspectorate Act 2011</b> ;   | S. 6(1)(ja) inserted by No. 70/2011 s. 47(1).   |
| (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.  |   |



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s. 6

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- (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).
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**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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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 Victorian Public Sector Commission. This Division provides for the establishment of Departments and Administrative Offices. The Victorian Public Sector Commission is established by Part 4.

**Note to s. 11  
amended by  
No. 6/2014  
s. 5.**

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**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.

**13A Responsibility of Department Heads—public entities**

- (1) For the purposes of this section, a public entity is a *relevant public entity* in relation to a Department Head if the Minister who has responsibility for the public entity is also a Minister who has responsibility for the Department.

S. 13A  
inserted by  
No. 6/2014  
s. 20.

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- (2) A Department Head is responsible for—
- (a) advising the public service body Minister or Ministers on matters relating to a relevant public entity, including the discharge by the public entity of its responsibilities, including those under this or any other Act; and
  - (b) working with, and providing guidance to, each relevant public entity to assist the entity on matters relating to public administration and governance.
- (3) Unless prohibited from doing so by or under any law, a relevant public entity must provide to the Department Head any information required by the Department Head to enable the Department Head to comply with subsection (2)(a).
- (4) Nothing in this section authorises or permits a Department Head to direct or control a relevant public entity or public entity Head in the performance of the functions conferred on the public entity or the public entity Head under this or any other Act.

#### **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) 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 or bodies—
  - (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;
  - (ba) the Chairperson within the meaning of Division 3 of Part 5 of the **Transport Integration Act 2010** in relation to the office of the Taxi Services Commission;
  - (c) the Chief Commissioner of Police in relation to Victoria Police;

S. 16(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
135.2(a)(i)).

S. 16(1)(ba)  
inserted by  
No. 34/2011  
s. 102.

S. 16(1)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
135.2(a)(ii)).

Note to  
s. 16(1)(c)  
inserted by  
No. 37/2014  
s. 10(Sch.  
item  
135.2(a)(iii)).

### Note

Section 106(i) provides that this Act (except to the extent it expressly provides otherwise) does not apply to a police officer, police reservist, police recruit or protective services officer under the **Victoria Police Act 2013**.

- 
- (ca) the Chief Executive Officer of the IBAC in relation to the office of the IBAC within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;
- (d) the Commissioner for Environmental Sustainability in relation to the office of the Commissioner under the **Commissioner for Environmental Sustainability Act 2003**;
- \* \* \* \* \*
- (f) the Electoral Commissioner in relation to the office of the Victorian Electoral Commission;
- (faa) the Fire Services Levy Monitor in relation to the office of the Fire Services Levy Monitor within the meaning of the **Fire Services Levy Monitor Act 2012**;
- (fa) the Inspector in relation to the Victorian Inspectorate within the meaning of the **Victorian Inspectorate Act 2011**;
- (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 Commissioner for Privacy and Data Protection in relation to the office of the Commissioner for Privacy and Data Protection;
- S. 16(1)(ca) inserted by No. 66/2011 s. 43(2).
- S. 16(1)(e) repealed by No. 82/2012 s. 165(2)(a).
- S. 16(1)(faa) inserted by No. 81/2012 s. 115(1).
- S. 16(1)(fa) inserted by No. 30/2005 s. 11(1), repealed by No. 30/2005 s. 11(2), new s. 16(1)(fa) inserted by No. 70/2011 s. 47(2).
- S. 16(1)(g) substituted by No. 108/2004 s. 117(2).
- S. 16(1)(i) substituted by No. 60/2014 s. 140(Sch. 3 item 38.2).

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s. 16

- S. 16(1)(ia)  
inserted by  
No. 6/2012  
s. 51.
- S. 16(1)(j)  
substituted by  
No. 3/2012  
s. 27.
- S. 16(1)(k)  
repealed by  
No. 82/2012  
s. 165(2)(b).
- S. 16(1)(ka)  
inserted by  
No. 47/2011  
s. 24.
- S. 16(1)(kb)  
inserted by  
No. 79/2012  
s. 83(2).
- S. 16(1)(kc)  
inserted by  
No. 24/2014  
s. 81.
- S. 16(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
135.2(b)(i)).
- (ia) the Freedom of Information Commissioner in relation to the office of the Freedom of Information Commissioner;
- (j) the Solicitor for Public Prosecutions in relation to Associate Crown Prosecutors appointed under section 37 of the **Public Prosecutions Act 1994** and the Office of Public Prosecutions;
- \* \* \* \* \*
- (ka) the Road Safety Camera Commissioner in relation to the office of the Road Safety Camera Commissioner;
- (kb) the Principal Commissioner within the meaning of the **Commission for Children and Young People Act 2012** in relation to the office of the Commission for Children and Young People;
- (kc) the Chairperson within the meaning of Division 2 of Part 2 of the **Game Management Authority Act 2014** in relation to the office of the Game Management Authority;
- (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 or body specified in subsection (1) or an office specified 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 or body; and  
S. 16(2)(a) amended by No. 37/2014 s. 10(Sch. item 135.2(b)(ii)).
- (b) an employee were a reference to an employee in that office or body; and  
S. 16(2)(b) amended by No. 37/2014 s. 10(Sch. item 135.2(b)(ii)).
- (c) an executive were a reference to a person employed in that office or body as an executive; and  
S. 16(2)(c) amended by No. 37/2014 s. 10(Sch. item 135.2(b)(ii)).
- (d) a public service body Head were a reference to the office holder specified in relation to that office or body in that subsection or Order.  
S. 16(2)(d) amended by No. 37/2014 s. 10(Sch. item 135.2(b)(ii)).
- (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 Victorian Public Sector Commission must, at the direction of the Premier, review the performance of a public service body Head (other than the Victorian Public Sector Commissioner), either generally or in respect of a particular matter.  
S. 17(1) amended by No. 6/2014 s. 6(1).
- (2) In exercising its functions under subsection (1), the Victorian Public Sector Commission 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.  
S. 17(2) amended by No. 6/2014 s. 6(2).

## 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 does not apply to the Victorian Public Sector Commission or the Victorian Public Sector Commissioner.

S. 19(4)  
substituted by  
No. 6/2014  
s. 7.

### 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.

\* \* \* \* \*

S. 20(2)  
repealed by  
No. 27/2009  
s. 4.

- (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 Victorian Public Sector Commission; and

S. 20(3)(d)  
amended by  
No. 6/2014  
s. 8.

- (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.

\* \* \* \* \*

S. 21  
repealed by  
No. 27/2009  
s. 5.

#### 22 Dealing with unsatisfactory performance, misconduct and serious misconduct

The regulations may—

- (a) establish procedures for dealing with allegations of unsatisfactory performance, misconduct and serious misconduct; and

S. 22  
amended by  
No. 29/2006  
s. 3(Sch. 1  
item 32),  
substituted by  
No. 27/2009  
s. 6.

- (b) empower the imposition of penalties for misconduct or serious misconduct which may include reduction in salary or classification or both, suspension or dismissal.

#### **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;
- (ab) in the case of the Solicitor for Public Prosecutions—the Director of Public Prosecutions;
- (ac) in the case of the Chief Executive Officer of Court Services Victoria or a Court Chief Executive Officer—the Courts Council within the meaning of the **Court Services Victoria Act 2014**;
- (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.

S. 24(ab)  
inserted by  
No. 3/2012  
s. 28.

S. 24(ac)  
inserted by  
No. 1/2014  
s. 60.

## 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.



s. 25A

- (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.

S. 25(4)  
repealed by  
No. 37/2014  
s. 10(Sch.  
item 135.3).

\* \* \* \* \*

- (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.

S. 25A  
inserted by  
No. 27/2009  
s. 7.

## 25A Remuneration of executives

The approval of the Premier is required in respect of the remuneration to be paid to the following classes of executives—

- (a) public service body Heads;

\* \* \* \* \*

S. 25A(b)  
repealed by  
No. 6/2014  
s. 21.

(c) a prescribed class of executives.

## 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.
- (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
  - (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.
- (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(2)(b)  
amended by  
No. 80/2006  
s. 9(1).

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).

**Note**

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

Note to s. 27 substituted by No. 37/2014 s. 10(Sch. item 135.4).

**Division 6—Mobility of employees**

Pt 3 Div. 6 (Heading) amended by No. 27/2009 s. 8.

**28 Transfer directed by public service body Head or public entity**

S. 28 (Heading) amended by No. 27/2009 s. 9(1).

(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.

(1A) If a public entity considers it appropriate to do so, it may, with the approval of the Head of a public service body, transfer an employee of the public entity to duties in that public service body on terms and conditions of employment that are no less favourable overall.

S. 28(1A) inserted by No. 27/2009 s. 9(2).

(1B) A transfer under this section may be permanent or for a fixed term.

S. 28(1B) inserted by No. 27/2009 s. 9(2).

(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

S. 29(1)  
amended by  
No. 6/2014  
s. 9.

- (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 Victorian Public Sector Commissioner, 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

S. 30(1)  
substituted by  
No. 27/2009  
s. 10(1).

- (1) This section applies if a function is transferred—
  - (a) from one public service body to another public service body; or
  - (b) from a public service body to a public entity; or
  - (c) from a public entity to a public service body.

S. 30(1A)  
inserted by  
No. 27/2009  
s. 10(1).

- (1A) On the transfer of the function, 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 public service body or public entity to which the function was transferred on terms and conditions of employment that are no less favourable overall.

S. 30(1B)  
inserted by  
No. 27/2009  
s. 10(1).

- (1B) A transfer under this section may be permanent or for a fixed term.

S. 30(2)  
amended by  
No. 27/2009  
s. 10(2).

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

- (3) A declaration under subsection (1A) 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.

S. 30(3)  
amended by  
No. 27/2009  
s. 10(2).

### **31 Transfer does not affect employment continuity**

S. 31  
substituted by  
No. 27/2009  
s. 11.

- (1) This section applies to a transfer of—
- (a) an employee of a public service body—
- (i) to other duties in a public service body;  
or
- (ii) to duties in another public service body  
or a public entity; or
- (b) an employee of a public entity to duties in a public service body.
- (2) This section applies whether the transfer is made under section 28, 29 or 30 or at the initiative of the employee or otherwise.
- (3) The transfer of the employee does not constitute a resignation or termination of employment and the post-transfer service is to be regarded as continuous with the pre-transfer service.

### **31A Assignment of duties to employees**

S. 31A  
inserted by  
No. 27/2009  
s. 11.

A public service body Head may assign to an employee in the public service body duties consistent with his or her employment classification, skills and capabilities.

### **31B Continuity of certain entitlements of former public sector employee**

S. 31B  
inserted by  
No. 37/2013  
s. 15.

If within the period of 12 months after ceasing to be employed as a public sector employee, a person becomes employed—

- (a) as an electorate officer under section 30 of the **Parliamentary Administration Act 2005**; or
- (b) as a Ministerial officer under section 98; or
- (c) as a Parliamentary adviser under section 99—

the period of service as a public sector employee is to be recognised in determining any entitlements accruing as a result of becoming so employed in respect of which continuity of service is relevant unless the entitlement was paid out upon ceasing to be employed as a public sector employee.

#### **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.
- (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 Reform Act 2012**.

S. 32(4)(b) amended by No. 20/2012 s. 226(Sch. 5 item 21).

#### 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) on the ground 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

S. 33(1)(d) substituted by No. 27/2009 s. 12(1).

\* \* \* \* \*

S. 33(1)(f) repealed by No. 27/2009 s. 12(2).



- (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)**

S. 34(1)  
amended by  
No. 3/2012  
s. 29(1).

- (1) Subject to subsection (1A), 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.

S. 34(1A)  
inserted by  
No. 3/2012  
s. 29(2).

- (1A) The Director of Public Prosecutions may terminate the employment of the Solicitor for Public Prosecutions 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;

\* \* \* \* \*

S. 35(2)(ba) inserted by No. 80/2006 s. 4(3), repealed by No. 24/2009 s. 37(5).

(c) directions that may be issued by the Premier.

### **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

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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 3A—ADMINISTRATIVE GUIDELINES**

Pt 3A  
(Heading and  
s. 36A)  
inserted by  
No. 6/2014  
s. 22.

**36A Administrative guidelines**

S. 36A  
inserted by  
No. 6/2014  
s. 22.

- (1) The Secretary to the Department of Premier and Cabinet may issue guidelines in relation to the administrative operations of a public service body or a public entity.
- (2) Guidelines under subsection (1) may be issued to—
  - (a) all public service bodies and public entities;  
or
  - (b) a specified public service body or public entity; or
  - (c) a specified class of public service bodies or public entities.
- (3) If a public service body or a public entity to which guidelines have been issued under subsection (1) operates, or intends to operate, in a manner that is inconsistent with those guidelines, the relevant public service body Head or public entity Head must provide written reasons for doing so to the Secretary to the Department of Premier and Cabinet.
- (4) For the purposes of this section, the administrative operation of a public service body or public entity does not include the exercise by the public service body or public entity of a discretion in the performance of its functions.

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**PART 4—VICTORIAN PUBLIC SECTOR COMMISSION**

**Division 1—The Commission**

Pt 4  
(Headings  
and ss 37–74)  
amended by  
Nos 80/2006  
ss 3, 4(4)–(8),  
10–13,  
24(2)(3),  
4/2008  
s. 32(Sch.  
item 28),  
24/2009  
s. 37(6)–(8),  
27/2009 s. 13,  
69/2009  
s. 54(Sch. Pt 2  
item 39),  
16/2010  
s. 209(Sch.  
item 6),  
66/2011  
s. 43(3),  
70/2011  
s. 47(3),  
82/2012  
ss 178, 179,  
substituted as  
Pt 4  
(Headings  
and ss 37–  
74B) by  
No. 6/2014  
s. 10.

S. 37  
substituted by  
No. 6/2014  
s. 10.

S. 38  
substituted by  
No. 6/2014  
s. 10.

**37 Establishment of Commission**

- (1) The Victorian Public Sector Commission is established.
- (2) The Commission is to be constituted by the Victorian Public Sector Commissioner.

**38 Objectives of Commission**

The objectives of the Commission are—

- (a) to strengthen the efficiency, effectiveness and capability of the public sector in order to meet existing and emerging needs and deliver high quality services; and
- (b) to maintain, and advocate for, public sector professionalism and integrity.

**39 Functions of Commission—public sector efficiency, effectiveness and capability**

S. 39  
substituted by  
No. 6/2014  
s. 10.

- (1) In order to give effect to the objective specified in section 38(a), the Commission has the following functions—
- (a) to assess and provide advice and support on issues relevant to public sector administration, governance, service delivery and workforce management and development;
  - (b) to conduct research and disseminate best practice in relation to public sector administration, governance, service delivery and workforce management and development;
  - (c) to collect and report on whole of government data;
  - (d) to conduct inquiries as directed by the Premier (see Division 4).
- (2) Without limiting subsection (1), the Commission—
- (a) must perform any work falling within its functions under subsection (1)(a), (b) or (c) as requested by the Premier; and
  - (b) may perform any work falling within its functions under subsection (1)(a), (b) or (c) as requested by a Minister or a public sector body.

**40 Functions of Commission—public sector professionalism and integrity**

S. 40  
substituted by  
No. 6/2014  
s. 10.

- (1) In order to give effect to the objective specified in section 38(b), the Commission has the following functions—

- (a) to advocate for an apolitical and professional public sector;
  - (b) to issue and apply codes of conduct and standards (see sections 61 and 62);
  - (c) to monitor and report to public sector body Heads on compliance with the public sector values, codes of conduct, and public sector employment principles and standards (see section 63);
  - (d) to review employment related actions and make recommendations following those reviews (see sections 64 and 65);
  - (e) to maintain a register of lobbyists and a register of instruments (see sections 66 and 67).
- (2) In performing a function specified in subsection (1)(a), (b), (c) or (d), the Commission is not subject to Ministerial direction or control.

S. 41  
substituted by  
No. 6/2014  
s. 10.

#### **41 Powers of Commission**

- (1) Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act or any other Act.
- (2) Without limiting subsection (1), the Commission may require a public sector body to provide any document or information required by the Commission in connection with the performance of its functions.
- (3) The Commission may specify the form in which information required under subsection (2) is to be provided.
- (4) Information required to be provided to the Commission under subsection (2) may include personal information about an employee of the public sector body.

## **42 Obligations of public sector bodies**

- (1) A public sector body must cooperate with the Commission in the performance by the Commission of any of its functions.
- (2) A public sector body must—
  - (a) provide to the Commission any document and any information required under section 41(2); and
  - (b) in the case of information required to be provided in a form specified under section 41(3), provide the information in that form.

**S. 42**  
substituted by  
**No. 6/2014**  
s. 10.

## **Division 2—Victorian Public Sector Commissioner**

### **43 Appointment of Commissioner**

- (1) The Governor in Council, on the recommendation of the Premier, may appoint an eligible person as the Victorian Public Sector Commissioner.
- (2) A person is eligible to be appointed under subsection (1) if the Premier is satisfied that the person has appropriate knowledge and experience in one or more of the fields of public administration, governance, law, public policy or senior management.
- (3) A person is not eligible to be appointed under subsection (1) if the person is currently—
  - (a) a member of the Parliament of Victoria; or
  - (b) a member of the Parliament of the Commonwealth, another State or a Territory; or
  - (c) a Councillor; or
  - (d) a Department Head.

**S. 43**  
substituted by  
**No. 6/2014**  
s. 10.



S. 44  
substituted by  
No. 6/2014  
s. 10.

#### 44 Terms and conditions of appointment

- (1) The Commissioner is appointed on the terms and conditions (including the remuneration and allowances) that are specified in the instrument of appointment.
- (2) The terms and conditions may provide for the appointment of the Commissioner on a full-time or part-time basis.
- (3) Subject to this Part, the Commissioner—
  - (a) holds office for a period of not less than 3 years and not more than 5 years, as specified in the instrument of appointment; and
  - (b) is eligible for re-appointment.
- (4) Except with the written permission of the Premier, the Commissioner must not—
  - (a) engage in any other employment; or
  - (b) carry on any business, profession or trade; or
  - (c) hold any other office or position, paid or unpaid.

S. 45  
substituted by  
No. 6/2014  
s. 10.

#### 45 Vacancy and resignation

The Commissioner ceases to hold office if he or she—

- (a) resigns by written notice given to the Premier; or
- (b) becomes an insolvent under administration; or
- (c) is convicted of—
  - (i) an indictable offence; or

- (ii) an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election to the Parliament of Victoria or of the Commonwealth or of another State or a Territory or for election as a Councillor; or
- (e) is employed as a Department Head; or
- (f) is removed from office under section 46.

**46 Removal from office**

- (1) The Governor in Council, on the recommendation of the Premier, may remove the person appointed as Commissioner from office.
- (2) The Premier may only recommend the removal from office of the person appointed as Commissioner if the Premier is satisfied that the person is unfit to hold the office because of incapacity or misconduct or because the person has brought the Commission into disrepute.

S. 46  
substituted by  
No. 6/2014  
s. 10.

**47 Acting Commissioner**

- (1) The Governor in Council, on the recommendation of the Premier, may appoint an eligible person to act in the office of the Commissioner—
  - (a) during a vacancy in that office; or
  - (b) during a period when the Commissioner is absent from duty or is, for any reason, unable to perform the duties of the office.
- (2) An appointment under subsection (1) is for the period, not exceeding 12 months, specified in the instrument of appointment.
- (3) Subject to subsection (5), the Premier may by instrument appoint an eligible person to act in the office of the Commissioner—

S. 47  
substituted by  
No. 6/2014  
s. 10.

- (a) during a vacancy in that office; or
  - (b) during a period when the Commissioner is absent from duty or is, for any reason, unable to perform the duties of the office.
- (4) An appointment under subsection (3) is for the period, not exceeding 3 months, specified in the instrument of appointment.
- (5) The Premier must not make more than one appointment under subsection (3) in relation to the same vacancy or absence.
- (6) The appointment of an Acting Commissioner under this section is on the terms and conditions (including the remuneration and allowances) that are specified in the instrument of appointment.
- (7) A person is eligible to be appointed to act in the office of the Commissioner if the person would be eligible to be appointed as the Commissioner under section 43.
- (8) An Acting Commissioner has all the powers and functions of the Commissioner and in exercising those powers and performing those functions is subject to the same requirements that apply to the Commissioner.

S. 48  
substituted by  
No. 6/2014  
s. 10.

#### **48 Functions of Commissioner**

- (1) The Commissioner has—
- (a) all the powers and functions of the Commission conferred on it by or under this or any other Act; and
  - (b) any other powers or functions conferred on the Commissioner by or under this or any other Act.
- (2) All acts or things done by the Commissioner in the name or on behalf of the Commission are taken to have been done by the Commission.

## 49 Delegation

S. 49  
substituted by  
No. 6/2014  
s. 10.

- (1) The Commissioner may by instrument delegate any power or function of the Commissioner under this or any other Act (other than a power or function specified in subsection (2)) to—
  - (a) a member of the staff of the Commission; or
  - (b) a person engaged by the Commission to assist the Commission in the performance of its functions.
- (2) The following powers of the Commissioner are not delegable—
  - (a) a power of delegation under subsection (1);
  - (b) the power under section 17 to review the performance of a public service body Head;
  - (c) the power under section 59 to report on the conduct and findings, and any recommendations, of an inquiry;
  - (d) the power under section 61 to issue codes of conduct;
  - (e) the power under section 62 to issue employment standards;
  - (f) the power under section 63 to make recommendations in relation to the oversight of public sector compliance with the public sector values, codes of conduct, the public sector employment principles and standards;
  - (g) the power under section 65 to make recommendations following a review of an employment related action conducted by the Commission under section 64.

S. 50  
substituted by  
No. 6/2014  
s. 10.

## 50 Conflict of interest

- (1) If the Commissioner considers that he or she has a conflict of interest in any matter that is the subject of an inquiry, a review of an employment related action or any other activity required or requested to be conducted by the Commission, the Commissioner must—
  - (a) decline to conduct the inquiry, review or other activity; and
  - (b) notify the Secretary to the Department of Premier and Cabinet of the conflict of interest.
- (2) On being notified by the Commissioner under subsection (1)(b) of a conflict of interest, the Secretary must authorise a person—
  - (a) to conduct the inquiry, review or activity; and
  - (b) in the case of an inquiry or a review of an employment related action, to make recommendations following the inquiry or review.
- (3) The Secretary must not authorise a person under subsection (2) unless—
  - (a) the Secretary is satisfied that—
    - (i) the person is qualified to be authorised because the person has appropriate knowledge and experience in one or more of the fields of public administration, governance, law, public policy or senior management; and
    - (ii) the person is unconnected with the matter of the inquiry, review or activity and does not have a conflict of interest in the matter; and

- (b) in the case of an authorisation to conduct an inquiry, the Premier has approved the authorisation of the person.
- (4) In conducting an inquiry, a review of an employment related action or another activity, a person authorised under subsection (2)—
  - (a) may exercise all the relevant powers and functions of the Commissioner; and
  - (b) in exercising those powers and performing those functions is subject to the same requirements that would apply to the Commissioner.
- (5) An inquiry, a review of an employment related action or another activity conducted by a person authorised under subsection (2) is not invalid by virtue of a defect or irregularity in, or in connection with, the authorisation.

### 51 Staff

- (1) Any employees that are necessary to enable the Commission to perform its functions may be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The Commission may engage any contractor, agent or other person to assist in the performance of the functions of the Commission.

S. 51  
substituted by  
No. 6/2014  
s. 10.

### Division 3—Advisory Board

### 52 Establishment and constitution of Advisory Board

- (1) The Advisory Board is established.
- (2) The Advisory Board consists of—
  - (a) the Secretary to the Department of Premier and Cabinet; and
  - (b) other members appointed by the Premier under section 53.

S. 52  
substituted by  
No. 6/2014  
s. 10.

S. 53  
substituted by  
No. 6/2014  
s. 10.

### **53 Appointment of members of Advisory Board**

- (1) The Premier may by instrument appoint not more than 7 persons as members of the Advisory Board.
- (2) In appointing members of the Advisory Board, the Premier must have regard to the mix of knowledge, skills and experience of the members of the Advisory Board, including those pertaining to the public sector, business, service delivery and regional matters.
- (3) The appointment of a member of the Advisory Board appointed under subsection (1)—
  - (a) is for the period, not exceeding 3 years, specified in the instrument of appointment; and
  - (b) subject to subsection (5), is on the terms and conditions specified in the instrument of appointment.
- (4) A person appointed as a member of the Advisory Board is eligible for re-appointment.
- (5) A public sector employee appointed to the Advisory Board is not entitled to remuneration in relation to that appointment.

S. 54  
substituted by  
No. 6/2014  
s. 10.

### **54 Role and functions of Advisory Board**

- (1) The role of the Advisory Board is to provide to the Commission—
  - (a) advice in relation to the preparation of the annual plan and strategic plan of the Commission; and
  - (b) strategic advice in relation to matters relevant to the objectives and functions of the Commission.

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- (2) The Commission must have regard to the advice of the Advisory Board—
- (a) in the performance of its functions; and
  - (b) in the development of its annual and strategic plans.

#### **55 Meetings and procedures of Advisory Board**

- (1) The Secretary to the Department of Premier and Cabinet is the chairperson of meetings of the Advisory Board.
- (2) Subject to this Act, the Advisory Board may regulate its own procedures.

**S. 55**  
substituted by  
No. 6/2014  
s. 10.

#### **Division 4—Inquiries**

#### **56 Inquiries**

- (1) The Premier may direct the Commission to conduct an inquiry into any matter relating to a public sector body other than—
  - (a) the IBAC; or
  - (b) the office of the Ombudsman; or
  - (c) the Victorian Auditor-General's Office; or
  - (d) the Victorian Electoral Commission; or
  - (e) the Victorian Inspectorate within the meaning of the **Victorian Inspectorate Act 2011**.
- (2) An 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. 56**  
substituted by  
No. 6/2014  
s. 10.



S. 57  
substituted by  
No. 6/2014  
s. 10.

## 57 Powers on inquiries

- (1) A person conducting an inquiry may, in connection with the inquiry, enter any premises of a body that is the subject of the inquiry.
- (2) Sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958** apply to a person conducting an 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 an 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 an 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 abrogates any privilege or immunity existing by custom or convention that relates to the production of documents of previous Governments.

S. 58  
substituted by  
No. 6/2014  
s. 10.

## 58 Procedure and evidence at an inquiry

- (1) If the person conducting an inquiry agrees, a person or body may be accompanied to the inquiry by a legal practitioner or other person.
- (2) The person conducting an 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 an inquiry may give directions as to the procedure to be followed at or in connection with the inquiry.

## 59 Reports of inquiries

- (1) On the completion of an inquiry, the Commission 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 of the report to—
    - (i) the Premier; and
    - (ii) the Minister responsible for any body that is the subject of the inquiry.
- (2) As soon as practicable after a Minister is provided with a report under subsection (1)(b)(ii), the Minister must provide to the Premier information as to any action taken or proposed to be taken in relation to the subject-matter of the report.
- (3) In addition, if the inquiry relates to a special body, the Minister must cause a copy of the report, together with information as to any action taken or proposed to be taken in relation to the subject-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.

S. 59  
substituted by  
No. 6/2014  
s. 10.

## 60 Bodies with judicial or quasi-judicial functions

- (1) Nothing in this Division empowers the Commission to conduct, or the Premier to direct the conduct of, an inquiry into any exercise by a body of a function that is of a judicial or quasi-judicial nature.
- (2) The conduct of an inquiry into any matter relating to a body that exercises functions that are of a judicial or quasi-judicial nature must not in any

S. 60  
substituted by  
No. 6/2014  
s. 10.

way impede the exercise by the body of those functions.

## **Division 5—Maintaining public sector professionalism and integrity**

### **Subdivision 1—Codes of conduct and standards**

#### **61 Codes of conduct**

- (1) The Commission must 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) Subject to subsection (5), the Commission may determine to whom a code of conduct applies.
- (5) If a code of conduct is based on public sector values which a special body is not required to apply under section 7(2), the Commission must not apply that code of conduct to the special body or its employees to the extent that it relates to those public sector values.
- (6) A contravention of a code of conduct by a public official who is bound by the code is capable of constituting misconduct.
- (7) The Commission may amend and re-issue a code of conduct or issue a new code of conduct in substitution for a previously issued one.

S. 61  
substituted by  
No. 6/2014  
s. 10.

#### **62 Standards concerning public sector employment principles**

- (1) The Commission must establish and issue standards concerning the application of the public sector employment principles.

S. 62  
substituted by  
No. 6/2014  
s. 10.

- (2) Standards issued under subsection (1) are binding on the public sector bodies to which they apply and on persons employed in those bodies.
- (3) The Commission may determine to whom a standard issued under subsection (1) applies.
- (4) A public sector body Head must ensure that persons employed in the body are informed about the application of the public sector employment principles and standards issued under subsection (1).

**63 Oversight of compliance with public sector values, codes of conduct, public sector employment principles and standards**

S. 63  
substituted by  
No. 6/2014  
s. 10.

- (1) The Commission may make recommendations to a public sector body Head on the steps that should be taken to change or introduce processes in relation to the public sector body in order to promote or comply with any of the following, to the extent that they apply to the public sector body—
  - (a) the public sector values;
  - (b) codes of conduct;
  - (c) the public sector employment principles;
  - (d) standards.
- (2) If a public sector body Head has not adopted a recommendation made under subsection (1) within 14 days after it is made, he or she must provide the Commission with a written statement of reasons for not adopting the recommendation within 14 days after the end of that period.
- (3) Reasons given to the Commission by a public sector body Head for not adopting a recommendation made under subsection (1) may be included in the annual report of the Commission.

## Subdivision 2—Reviews of employment related actions

### 64 Review of actions

S. 64  
substituted by  
No. 6/2014  
s. 10.

- (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 section 62.

Notes to  
s. 64(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 135.5).

#### Notes

- 1 Public service bodies include offices and bodies specified in section 16(1)—see section 16(2).
  - 2 A review of an employment related action (other than an initial review) taken in respect of an employee of the Commission may enliven a conflict of interest—see section 50.
- (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 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

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- (v) the matter is the subject of a proceeding in any court or tribunal initiated by the applicant, including a proceeding under Division 2 of Part 8 of the **Equal Opportunity Act 2010**; or
  - (vi) the matter could more appropriately be the subject of a proceeding in any court or tribunal, including a proceeding under Division 2 of Part 8 of the **Equal Opportunity Act 2010**;
  - (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 accompanied by a legal practitioner or other person;
  - (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 Commission in specified circumstances;
  - (f) provide for an application for a review to be referred to the Commission 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 Commission on conducting a review, including power to require the appropriate public service body Head to provide the

Commission with information or documents and power to interview any employee in the body.

- (4) Regulations made for the purposes of this section—
- (a) must not require the Commission to hold a formal hearing on a review; and
  - (b) must ensure that the rules of natural justice are adhered to on a review.

S. 65  
substituted by  
No. 6/2014  
s. 10.

## 65 Recommendations following review

- (1) A person or body (including the Commission) 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 has not adopted a recommendation made in a report on a review within 14 days after receiving the report, he or she must, within 14 days after the end of that period, provide a written statement of the reasons for not adopting the recommendation to the Commission, the applicant for the review and any other person affected by the recommendation.
- (4) Reasons given by a public service body Head for not adopting a recommendation made in a report of a review may be included in the annual report of the Commission.

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### Subdivision 3—Registers

#### 66 Register of lobbyists

- (1) The Commission must maintain a register of lobbyists.
- (2) The register must be kept electronically.
- (3) The register must be maintained in accordance with the Victorian Government Professional Lobbyist Code of Conduct as issued by the Premier from time to time.
- (4) The Commission must ensure, as far as practicable, that the contents of the register are accessible to the public at all times without charge on the Internet.

S. 66  
substituted by  
No. 6/2014  
s. 10.

#### 67 Register of instruments

- (1) The Commission must maintain a register of instruments issued under this Act.
- (2) The register must be kept electronically.
- (3) The register must contain up-to-date versions of the following—
  - (a) any codes of conduct issued by the Commission;
  - (b) any standards issued by the Commission;
  - (c) any Orders made by the Governor in Council under Part 5;
  - (d) any other instrument issued under this Act that the Premier directs, in writing, the Commission to enter in the register.
- (4) The Commission may enter additional material in the register if the Commission considers that it is likely to be useful to public sector employees.

S. 67  
substituted by  
No. 6/2014  
s. 10.



- (5) The Commission must ensure, as far as practicable, that the contents of the register are accessible to the public at all times without charge on the Internet.

## **Division 6—Annual plan, strategic plan and annual report**

### **68 Annual plan**

S. 68  
substituted by  
No. 6/2014  
s. 10.

- (1) The Commission must prepare an annual plan before each financial year.
- (2) The annual plan must—
  - (a) set out how the plan relates to, and supports, the strategic plan of the Commission; and
  - (b) specify priority areas for the forthcoming financial year; and
  - (c) identify key outputs and specific activities for each of those areas.
- (3) The Commission must consult with the Advisory Board in the development of its annual plan to determine the priority areas and specific activities for the forthcoming financial year.
- (4) Before 1 May of the preceding financial year, the Commission must submit a draft of the annual plan to the Premier for approval.
- (5) The Premier must consider the draft of the annual plan and may approve it—
  - (a) with or without changes; and
  - (b) subject to any conditions.
- (6) The Premier may, at any time during a financial year, direct the Commission to amend the approved annual plan for that financial year.
- (7) The Commission must act consistently with the annual plan in the performance of its functions.

## 69 Strategic plan

- (1) The Commission must prepare a three year strategic plan—
  - (a) in its first year of operation; and
  - (b) every third year after that year.
- (2) The strategic plan must identify the matters that present challenges and opportunities for the public sector and set out how the priorities of the Commission are to be strategically aligned with those matters.
- (3) The Commission must consult with the Advisory Board to identify those matters and determine how the priorities of the Commission are to be aligned with those matters.
- (4) Before the date fixed by the Premier in relation to each period of 3 years, the Commission must submit a draft of the strategic plan to the Premier for approval.
- (5) The Premier must consider the draft of the strategic plan and may approve it—
  - (a) with or without changes; and
  - (b) subject to any conditions.
- (6) The Premier may, at any time during a 3 year period, direct the Commission to amend the approved strategic plan for that period.

S. 69  
substituted by  
No. 6/2014  
s. 10.

## 70 Annual report

The annual report of the Commission's operations required under Part 7 of the **Financial Management Act 1994** must include explanations of—

- (a) how the operations of the Commission relate to its objectives; and

S. 70  
substituted by  
No. 6/2014  
s. 10.

- (b) how the Commission has achieved the priorities identified in its annual and strategic plans.

#### **Division 7—Application of other Acts**

S. 71  
substituted by  
No. 6/2014  
s. 10.

#### **71 Application of Freedom of Information Act 1982**

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

S. 72  
substituted by  
No. 6/2014  
s. 10.

#### **72 Application of Part 7A of Financial Management Act 1994**

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

#### **Division 8—The Commission and the IBAC**

S. 73  
substituted by  
No. 6/2014  
s. 10.

#### **73 Mandatory notification of corrupt conduct to IBAC**

- (1) The Commissioner must notify the IBAC of any matter of which the Commissioner becomes aware in the performance of functions or duties or the exercise of powers of the Commission under this Act or any other Act that appears to involve corrupt conduct.
- (2) This section does not apply to corrupt conduct of the IBAC or IBAC personnel.

S. 74  
substituted by  
No. 6/2014  
s. 10.

#### **74 Consultation prior to notification**

For the purposes of deciding whether to make a notification under this Division to the IBAC, the Commissioner may consult the IBAC.

**74A Communication of information to the IBAC**

- (1) At any time, the Commissioner may provide or disclose any information received or obtained in the course of the performance of functions or duties or the exercise of powers of the Commission under this Act or any other Act to the IBAC if the Commissioner considers that—
  - (a) the information is relevant to the performance of the functions or duties or the exercise of powers of the IBAC; and
  - (b) it is appropriate for the information to be brought to the attention of the IBAC, having regard to the nature of the information.
- (2) This section applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Commonwealth Act).

S. 74A  
substituted by  
No. 6/2014  
s. 10.

**74B Commission not to prejudice investigations of the IBAC**

- (1) If the Commission is, or becomes, aware of an IBAC investigation, the Commission must take all reasonable steps to ensure that the performance of its functions or duties or the exercise of its powers does not prejudice the IBAC investigation.
- (2) For the purpose of ensuring compliance with subsection (1), the Commission may consult the IBAC.

S. 74B  
substituted by  
No. 6/2014  
s. 10.

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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.

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## **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
  - (f) in compliance with the Act or subordinate instrument or other document under which the public entity is established.

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- (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.

## 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
    - (iv) assessing its own performance; and
  - (e) ensure that a code of conduct applicable to directors is in place; and

S. 81(1)(d)(iv)  
inserted by  
No. 6/2014  
s. 23.

- 
- (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

- 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.
- (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—

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

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**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.
- (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.

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- (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.
- (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.



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

- (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.

#### **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.

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- (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.
- (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.

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- (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.

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## 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 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;
  - (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.

### **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;

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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) 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.

**98A Continuity of certain entitlements of former  
Ministerial officer**

S. 98A  
inserted by  
No. 37/2013  
s. 16.

If within the period of 12 months after ceasing to be employed as a Ministerial officer, a person becomes employed—

- (a) as a public sector employee within the meaning of section 4; or
- (b) as an electorate officer under section 30 of the **Parliamentary Administration Act 2005**; or
- (c) as a Parliamentary adviser under section 99—

the period of service as a Ministerial officer is to be recognised in determining any entitlements accruing as a result of becoming so employed in respect of which continuity of service is relevant unless the entitlement was paid out upon ceasing to be employed as a Ministerial officer.



## 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.
- (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.

S. 99A  
inserted by  
No. 37/2013  
s. 17.

### 99A Continuity of certain entitlements of former Parliamentary adviser

If within the period of 12 months after ceasing to be employed as a Parliamentary adviser, a person becomes employed—

- (a) as a public sector employee within the meaning of section 4; or
- (b) as a Ministerial officer under section 98; or

- (c) as an electorate officer under section 30 of the **Parliamentary Administration Act 2005**—

the period of service as a Parliamentary adviser is to be recognised in determining any entitlements accruing as a result of becoming so employed in respect of which continuity of service is relevant unless the entitlement was paid out upon ceasing to be employed as a Parliamentary adviser.

### 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, an Associate Judge of the Supreme Court or an associate judge of the County Court; or
- (c) a tipstaff of a Judge of the Supreme Court or County Court.

S. 101(b)  
amended by  
No. 24/2008  
s. 87(1).

#### 102 Employment of judicial employees

- (1) The Chief Executive Officer of Court Services Victoria may employ any person as a judicial employee.
- (2) The public sector employment principles apply to the employment of judicial employees.

S. 102(1)  
amended by  
No. 1/2014  
s. 61.

### 103 Termination of employment as judicial employee

S. 103(1)  
amended by  
No. 1/2014  
s. 62(1).

(1) The employment of a judicial employee may be terminated at any time by the Chief Executive Officer of Court Services Victoria giving the employee, or the employee giving that Chief Executive Officer, notice of termination in accordance with subsection (2).

(2) The notice must be—

(a) 4 weeks notice of termination; or

(b) any other period of notice agreed between the Chief Executive Officer of Court Services Victoria and the employee.

S. 103(2)(b)  
amended by  
No. 1/2014  
s. 62(2).

(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.

S. 103(5)  
amended by  
Nos 80/2006  
s. 4(9),  
24/2009  
s. 37(9).

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

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**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 or body specified in section 16(1); or
  - (c) a person covered by section 106(1); 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

S. 104(3)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 135.6(a)).

S. 104(3)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 135.6(b)).

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.

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- (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.
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s. 105A

Pt 7A  
(Heading and  
ss 105A–  
105E)  
inserted by  
No. 27/2009  
s. 14.

## PART 7A—EMPLOYER POWERS IN EMERGENCY SITUATIONS

S. 105A  
inserted by  
Nos 27/2009  
s. 14.

### 105A Declaration of emergency situation

- (1) The Premier may declare that an emergency situation exists for the purposes of this Part if the Premier is satisfied that—
  - (a) circumstances exist that may cause a serious risk to public health; or
  - (b) an emergency exists that has been or is expected to be the subject of a declaration of a state of emergency; or
  - (c) an emergency situation otherwise exists which warrants the making of the declaration; or
  - (d) the declaration is necessary to assist the Victorian community or any part of the Victorian community to recover from a situation referred to in paragraph (a), (b) or (c).
- (2) The Premier must consult with the Minister administering the **Public Health and Wellbeing Act 2008** and the Chief Health Officer under that Act before making a declaration on the ground that circumstances exist that may cause a serious risk to public health.
- (3) Before making any declaration under this section, the Premier—
  - (a) must consult with the Minister and the Emergency Management Commissioner under the **Emergency Management Act 2013**; and

S. 105A(3)(a)  
amended by  
Nos 56/2011  
s. 30, 73/2013  
s. 101.

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- (b) may consult with any other persons who the Premier considers it appropriate to consult.
- (4) Immediately on the making of a declaration under this section, an emergency situation exists for the purposes of this Part.
- (5) The Premier must cause a notice of the making of a declaration under this section to be published in the Government Gazette as soon as practicable after it is made.
- (6) In this section a *declaration of a state of emergency* means—
- (a) a declaration of a state of emergency under section 198 of the **Public Health and Wellbeing Act 2008**;
  - (b) a declaration of a state of disaster under the **Emergency Management Act 1986**;
  - (c) a proclamation under Part 6 of the **Electricity Industry Act 2000**;
  - (d) a proclamation under Part 9 of the **Gas Industry Act 2001**;
  - (e) a proclamation under the **Fuel Emergency Act 1977** declaring that a state of emergency exists in relation to fuel;
  - (f) a declaration of a vital state project as referred to in the **Vital State Projects Act 1976**;
  - (g) a declaration of a vital industry under the **Vital State Industries (Works and Services) Act 1992**;
  - (h) a prescribed proclamation or declaration.



**s. 105B**

**S. 105B**  
inserted by  
No. 27/2009  
s. 14.

**105B Period of operation of declaration**

A declaration that an emergency situation exists remains in force for the period, not exceeding one month, specified in the notice unless it is sooner revoked or extended under this Part.

**S. 105C**  
inserted by  
No. 27/2009  
s. 14.

**105C Variation, extension or revocation of declaration**

- (1) The Premier may by declaration vary or revoke or extend a declaration under section 105A.
- (2) A declaration may be extended (or extended with variations) by another declaration for further periods not exceeding one month each but, subject to subsection (5), the total period that the declaration continues in force cannot exceed 6 months.
- (3) Sections 105A(2) and 105A(3) apply to the making of a declaration under this section varying or extending a declaration in the same way as they apply to the making of a declaration under section 105A.
- (4) A declaration under this section takes effect immediately on its making.
- (5) The Premier must cause a notice of the making of a declaration under this section to be published in the Government Gazette as soon as practicable after it is made.
- (6) The total period that the declaration continues in force can be extended beyond 6 months if each House of Parliament, by resolution, agrees to the extension before the declaration ceases to have effect.

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**105D Report to Parliament**

- (1) If a declaration that an emergency situation exists is made under this Part, the Premier must cause a report on the emergency situation and any action taken under section 105E(2) to be presented to each House of Parliament—
  - (a) if that House is then sitting, as soon as practicable after the declaration is made; and
  - (b) if that House is not then sitting, as soon as practicable after the next meeting of that House.
- (2) The report must set out the reasons for making the declaration.

S. 105D  
inserted by  
No. 27/2009  
s. 14.

**105E Powers of public sector body Heads in emergency situations**

- (1) This section applies if a declaration that an emergency situation exists is in force under this Part.
- (2) A public sector body Head may take all or any of the following actions—
  - (a) assign any duties to an employee;
  - (b) require an employee to perform duties with another public sector body;
  - (c) require an employee to perform duties at a place other than his or her usual place of work;
  - (d) direct an employee not to attend for duty.
- (3) An employee must comply with an action taken under subsection (2), but otherwise remains entitled to terms and conditions of employment that are no less favourable than those applying to his or her employment before the action was taken.

S. 105E  
inserted by  
No. 27/2009  
s. 14.

- (4) Nothing in this section affects any right or duty that an employee has under any other law.

**Example**

An employee would still be required to comply with a duty under section 25 of the **Occupational Health and Safety Act 2004** to take reasonable care for his or her own health and safety.

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**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) an Associate Judge of the Supreme Court within the meaning of Part III of the **Constitution Act 1975**;

S. 106(1)(c)  
amended by  
No. 24/2008  
s. 87(2)(a).

(d) an associate judge of the County Court;

S. 106(1)(d)  
amended by  
No. 24/2008  
s. 87(2)(b).

(e) a magistrate;

(f) a coroner;

S. 106(1)(f)  
amended by  
No. 77/2008  
s. 129(Sch. 2  
item 20.3).

(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;

S. 106(1)(h)  
amended by  
No. 3/2012  
s. 30(1).

(i) a police officer, police reservist, police recruit or protective services officer under the **Victoria Police Act 2013**;

S. 106(1)(i)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 135.7).

(j) a Parliamentary officer within the meaning of the **Parliamentary Administration Act 2005**.

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

S. 106(3)  
inserted by  
No. 3/2012  
s. 30(2).

- (2) Subsection (1) does not prevent a person covered by that subsection from having or exercising any functions of a public service body Head.
- (3) This Act applies to the Director of Public Prosecutions in relation to his or her functions in relation to the employment of the Solicitor for Public Prosecutions and Associate Crown Prosecutors.

### **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.

S. 111  
(Heading)  
substituted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 46).  
S. 111  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 39),  
repealed by  
No. 6/2014  
s. 11.

\* \* \* \* \*

## 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.

- 
- (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



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),  
new s. 117  
inserted by  
No. 24/2009  
s. 38.

**117 Transitional provision—repeal of Subdivision 5A of Division 2 of Part 4**

Any application begun but not completed under Subdivision 5A of Division 2 of Part 4 immediately before the repeal of the subdivision by section 37 of the **Fair Work (Commonwealth Powers) Act 2009** may be continued and completed in accordance with that Subdivision, as if that Subdivision were still in operation.

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**118 Savings and transitional provisions—Public  
Administration Amendment (Public Sector  
Improvement) Act 2014**

New s. 118  
inserted by  
No. 6/2014  
s. 12.

Schedule 3 has effect.

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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;

Sch. 1 cl. 1  
def. of *police*  
*force*  
repealed by  
No. 37/2014  
s. 10(Sch.  
item 135.8).

\* \* \* \* \*

Sch. 1 cl. 1  
def. of  
*public service*  
amended by  
Nos 23/2006  
s. 247, 26/2014  
s. 455(Sch.  
item 24.2).

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

\* \* \* \* \*

- (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*;

*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.

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

## 2 Privileges of former members of Parliament

- (1) A member of the public service or the teaching service, or a police officer, 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—

Sch. 1 cl. 2(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 135.9(a)).

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 Victoria Police (as the case requires) subject to the provisions in relation to classification, superannuation, sick leave and long service leave specified in subclause (3).

Sch. 1

Sch. 1 cl. 2(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 135.9(b)).

- (2) A member of the public service or the teaching service, or a police officer 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 Victoria Police 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 or the teaching service, or re-instated in Victoria Police, in a classification, grade or office not inferior to that which he or she held when he or she ceased to be in the public service, teaching service or Victoria Police 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

Sch. 1  
cl. 2(3)(a)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item  
135.9(c)(i)).

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;

\* \* \* \* \*

Sch. 1  
cl. 2(3)(c)  
repealed by  
No. 37/2014  
s. 10(Sch.  
item  
135.9(c)(ii)).

- (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—

Sch. 1

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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 **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—
- (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) on re-employment in the public service or teaching service, or re-instatement in Victoria Police, he or she is to be credited with the amount of sick leave or personal leave to which he or she was entitled on so

Sch. 1  
cl. 2(3)(g)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item  
135.9(c)(iii)).



Sch. 1

Sch. 1  
cl. 2(3)(h)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item  
135.9(c)(iii)).

- ceasing to be in the public service, teaching service or Victoria Police;
- (h) on re-employment in the public service or teaching service, or re-instatement in Victoria Police, a period from his or her ceasing to be in the public service, teaching service or Victoria Police until re-employment in the public service or the teaching service, or re-instatement in Victoria Police—
- (i) is to be regarded for the purposes of any long service leave as continuous with service in the public service, teaching service or Victoria Police;
- (ii) is not in the computation of the period of long service leave to be counted as service with the public service, teaching service or Victoria Police.
- (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 or teaching service, or appointed as a police officer, has (whether before or after the commencement of this Schedule)—
- (a) resigned from the public service, teaching service or Victoria Police in order to contest any Commonwealth election from 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 **Victoria Police Act 2013**, may, within two months after the declaration of the poll at that election, by Order published in the Government Gazette, re-employ or re-instate that person to the public service, the teaching service or Victoria Police (as the case requires) at the same classification as he or she had immediately before his or her resignation.

Sch. 1 cl. 3(1)  
amended by  
No. 24/2006  
s. 6.1.2(Sch. 7  
item 33.3),  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 135.10).

Sch. 1

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- (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

Sch. 1A  
inserted by  
No. 83/2008  
s. 19.

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.

Sch. 1A

## 2 Application of Schedule

This Schedule does not apply to—

Sch. 1A  
cl. 2(a)  
amended by  
No. 5/2013  
s. 65(a).

(a) a judge or reserve judge;

Sch. 1A  
cl. 2(b)  
amended by  
No. 5/2013  
s. 65(b).

(b) a magistrate or reserve magistrate;

Sch. 1A  
cl. 2(c)  
amended by  
No. 63/2013  
s. 96(a).

(c) a master or Associate Judge of the Supreme Court or a reserve Associate Judge within the meaning of the **Supreme Court Act 1986**;

Sch. 1A  
cl. 2(d)  
amended by  
No. 63/2013  
s. 96(b).

(d) a master or associate judge of the County Court or a reserve associate judge within the meaning of the **County Court Act 1958**;

(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.

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- (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.
  - (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.

#### **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.



Sch. 2

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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.

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- (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.

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## **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;

Sch. 2

- (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.

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## 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**.

Sch. 2

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

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

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.

Sch. 2 cl. 14  
inserted by  
No. 27/2009  
s. 15.

**14 Public Administration Amendment Act 2009**

Any instrument of delegation of a power under section 20(2) existing immediately before the commencement of section 4 of the **Public Administration Amendment Act 2009** continues in effect after that commencement as if the delegation of the power referred to section 20(1).

Sch. 2 cl. 15  
inserted by  
No. 3/2012  
s. 31.

**15 Public Prosecutions Amendment Act 2012**

Despite the amendments made to this Act by section 30 of the **Public Prosecutions Amendment Act 2012**, this Act continues to apply to a person who was an Associate Crown Prosecutor immediately before the commencement of that section as if the amendments had not been made for the remainder of the term of appointment of that person.

SCHEDULE 3

Section 118

SAVINGS AND TRANSITIONAL PROVISIONS—PUBLIC  
ADMINISTRATION AMENDMENT (PUBLIC SECTOR  
IMPROVEMENT) ACT 2014

Sch. 3  
amended by  
No. 20/2005  
s. 50,  
repealed by  
No. 80/2006  
s. 24(6),  
new Sch. 3  
inserted by  
No. 6/2014  
s. 13.

**1 Definitions**

In this Schedule—

*commencement day* means the day on which  
Part 2 of the **Public Administration  
Amendment (Public Sector Improvement)  
Act 2014** comes into operation;

*new Part 4* means Part 4 of this Act as in force on  
and after the commencement day;

*repealed Part 4* means Part 4 of this Act as in  
force immediately before the commencement  
day.

**2 General transitional provisions**

- (1) Unless the contrary intention appears, this  
Schedule does not affect or take away from the  
**Interpretation of Legislation Act 1984**.
- (2) If a provision of this Act, as in force before the  
commencement day, continues to apply by force  
of this Schedule, any other provision of this Act as  
in force at that time necessary to give effect to that  
continued provision also continues to apply in  
relation to that provision.

**3 State Services Authority abolished**

On the commencement day—

- (a) the State Services Authority is abolished;  
and



(b) a person holding any of the following offices under the repealed Part 4, whether substantively or in an acting capacity, ceases to hold that office—

- (i) the chairperson of the State Services Authority;
- (ii) the Public Sector Standards Commissioner;
- (iii) any other member of the State Services Authority.

#### **4 References to the State Services Authority etc.**

On and after the commencement day, in any Act, subordinate legislation, order, agreement, instrument, deed or other document—

- (a) a reference to the State Services Authority is to be read as a reference to the Victorian Public Sector Commission; and
- (b) a reference to the chairperson of the State Services Authority, the Public Sector Standards Commissioner or any other member of the State Services Authority is to be read as a reference to the Victorian Public Sector Commissioner; and
- (c) a reference to the chief executive officer acting on behalf of the State Services Authority is to be read as a reference to the Victorian Public Sector Commissioner.

#### **5 Person employed by State Services Authority**

On the commencement day, a person employed by the State Services Authority under Part 3 immediately before the commencement day is taken to be employed by the Victorian Public Sector Commission under Part 3 with the same classification and remuneration and subject to the same industrial award or agreement or contract of

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employment, and with the same rights to leave of absence and accrued or accruing entitlements as applied to the person on his or her employment immediately before that day.

#### **6 Transfer of records, information and documents**

All information, documents, reports and records held by the State Services Authority immediately before the commencement day—

- (a) are transferred to the Victorian Public Sector Commission on the commencement day; and
- (b) may be used and relied upon in any review, inquiry or other work continued or commenced by the Victorian Public Sector Commission under this Act.

#### **7 Codes of conduct and standards**

- (1) On and after the commencement day, a code of conduct issued by the Public Sector Standards Commissioner under section 63 of the repealed Part 4 that is in force immediately before the commencement day is taken to have been issued by the Victorian Public Sector Commission under section 61 of the new Part 4 and continues to apply to the class or classes of persons to whom it applied immediately before the commencement day.
- (2) On and after the commencement day, a standard issued by the Public Sector Standards Commissioner under section 64(5) or 66(2) of the repealed Part 4 that is in force immediately before the commencement day is taken to have been issued by the Victorian Public Sector Commission under section 62 of the new Part 4 and continues to apply to the class or classes of persons to whom it applied immediately before the commencement day.

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## **8 Performance review of public service body Head**

A review of the performance of a public service body Head conducted by the State Services Authority under section 17 that is not completed before the commencement day must be continued on and after that day by the Victorian Public Sector Commission under that section.

## **9 Systems reviews**

- (1) Despite the repeal of the repealed Part 4—
  - (a) a systems review conducted by the State Services Authority under section 50 of the repealed Part 4 at the request of a Minister or a public service body Head that is not completed before the commencement day may be continued under that section on and after that day by the Victorian Public Sector Commission; and
  - (b) a systems review conducted by the State Services Authority under section 50 of the repealed Part 4 required by the Premier that is not completed before the commencement day must be continued under that section on and after that day by the Victorian Public Sector Commission.
- (2) If the Victorian Public Sector Commission conducts a systems review referred to in subclause (1), section 51 of the repealed Part 4 applies to the systems review as if a reference in that section to the Authority were a reference to the Victorian Public Sector Commission.

## **10 Special inquiries and special review**

- (1) A special inquiry conducted by the State Services Authority under section 52 of the repealed Part 4 or a special review conducted by the State Services Authority under section 56 of the repealed Part 4 that is not completed before the

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commencement day must be continued on and after that day by the Victorian Public Sector Commission as an inquiry under Division 4 of the new Part 4.

- (2) A power exercised under section 53 or 57 of the repealed Part 4 in relation to a special inquiry or special review referred to in subclause (1) is, on and after the commencement day, taken to have been exercised under section 57 of the new Part 4.
- (3) A direction as to procedure given under section 54(3) or 58(3) of the repealed Part 4 in relation to a special inquiry or special review referred to in subclause (1) is, on and after the commencement day, taken to have been given under section 58(3) of the new Part 4.
- (4) A report prepared in relation to a special inquiry or a special review under section 55 or 59 of the repealed Part 4 and any recommendations contained in the report is, on and after the commencement day, taken to have been prepared under section 59 of the new Part 4 and has effect accordingly.

## **11 Review of actions**

- (1) A review of an employment related action conducted under section 64 of the repealed Part 4 that is not completed before the commencement day must be continued on and after that day under Division 4 of the new Part 4 by—
  - (a) in the case of a review conducted by the Public Sector Standards Commissioner—the Victorian Public Sector Commissioner; and
  - (b) in the case of a review conducted by any other person or body—by that person or body.

- (2) A recommendation made in a report under section 65 of the repealed Part 4 is, on and after the commencement day, taken to have been made under section 65 of the new Part 4 and has effect accordingly.

## **12 Requirement to provide information**

- (1) On and after the commencement day, a requirement under section 66(5) of the repealed Part 4 for a public service body Head or a public entity Head to provide information to the Public Sector Standards Commissioner, is taken to be a requirement under section 41(2) of the new Part 4 to provide that information to the Victorian Public Sector Commission.
- (2) On and after the commencement day, a requirement under section 66(6) of the repealed Part 4 for a special body Head to provide information to the Public Sector Standards Commissioner, is taken to be a requirement under section 41(2) of the new Part 4 to provide that information to the Victorian Public Sector Commission.
- (3) Unless the Commission specifies otherwise, information referred to in subclause (1) or (2) must be provided to the Commission in the time and manner specified by the Public Sector Standards Commissioner under section 66(5) or (6) (as the case may be) of the repealed Part 4.

## **13 Recommendation to change or introduce processes**

On and after the commencement day, a recommendation by the Public Sector Standards Commissioner made to a public service body Head or a public entity Head under section 66(7) of the repealed Part 4 is taken to have been made by the Victorian Public Sector Commission under

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section 63(1) of the new Part 4 and has effect accordingly.

**14 Other work of State Service Authority**

Work undertaken by the State Services Authority that is not completed before the commencement day may be continued on and after that day by the Victorian Public Sector Commission.

**15 Register of instruments**

On and from the commencement day, the register of instruments kept under section 72 of the repealed Part 4 is taken to be the register of instruments maintained under section 67 of the new Part 4.

**16 First annual report**

The Victorian Public Sector Commission must include in its first report under Part 7 of the **Financial Management Act 1994** a report on the operation of the State Services Authority under the repealed Part 4 during the relevant part of the financial year.

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## 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**



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**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**

**Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008**

*Assent Date:* 3.6.08  
*Commencement Date:* S. 87 on 17.12.08: Special Gazette (No. 377) 16.12.08 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Coroners Act 2008, No. 77/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 129(Sch. 2 item 20) on 1.11.09: s. 2  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Health Services Legislation Amendment Act 2008, No. 79/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 21 on 31.3.09: Government Gazette 19.2.09 p. 328  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

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**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**

**Fair Work (Commonwealth Powers) Act 2009, No. 24/2009**

*Assent Date:* 17.6.09  
*Commencement Date:* Ss 37, 38 on 1.7.09: Special Gazette (No. 227) 1.7.09 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Public Administration Amendment Act 2009, No. 27/2009**

*Assent Date:* 17.6.09  
*Commencement Date:* Ss 3–15 on 8.7.09: Special Gazette (No. 233) 7.7.09 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 46), (Sch. Pt 2 item 39) on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Equal Opportunity Act 2010, No. 16/2010**

*Assent Date:* 27.4.10  
*Commencement Date:* S. 209(Sch. item 6) on 1.8.11: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011, No. 34/2011**

*Assent Date:* 5.7.11  
*Commencement Date:* S. 102 on 19.7.11: Special Gazette (No. 236) 19.7.11 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Road Safety Camera Commissioner Act 2011, No. 47/2011**

*Assent Date:* 22.9.11  
*Commencement Date:* S. 24 on 12.10.11: Special Gazette (No. 313) 4.10.11 p. 1 (see Erratum: Special Gazette (No. 315) 4.10.11 p. 1)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

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**Emergency Management Legislation Amendment Act 2011, No. 56/2011**

*Assent Date:* 2.11.11  
*Commencement Date:* S. 30 on 3.11.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Independent Broad-based Anti-corruption Commission Act 2011, No. 66/2011**

*Assent Date:* 29.11.11  
*Commencement Date:* S. 43 on 1.7.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Victorian Inspectorate Act 2011, No. 70/2011**

*Assent Date:* 29.11.11  
*Commencement Date:* S. 47 on 1.7.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Public Prosecutions Amendment Act 2012, No. 3/2012**

*Assent Date:* 14.2.12  
*Commencement Date:* Ss 26–31 on 6.3.12: Special Gazette (No. 54) 28.2.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012, No. 6/2012**

*Assent Date:* 6.3.12  
*Commencement Date:* Ss 50, 51 on 7.11.12: Special Gazette (No. 373) 7.11.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Associations Incorporation Reform Act 2012, No. 20/2012**

*Assent Date:* 1.5.12  
*Commencement Date:* S. 226(Sch. 5 item 21) on 26.11.12: Special Gazette (No. 384) 20.11.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Commission for Children and Young People Act 2012, No. 79/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* S. 83 on 1.3.13: Special Gazette (No. 27) 29.1.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Fire Services Levy Monitor Act 2012, No. 81/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* S. 115(1) on 19.12.12: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

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**Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 165, 177–179 on 10.2.13; Special Gazette (No. 32)  
6.2.13 p. 2; s. 317 on 11.2.13: s. 2(5)  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

**Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, No. 5/2013**

*Assent Date:* 26.2.13  
*Commencement Date:* S. 65 on 27.2.13: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

**Parliamentary and Public Administration Legislation Amendment Act 2013,  
No. 37/2013**

*Assent Date:* 18.6.13  
*Commencement Date:* Ss 15–17 on 1.7.13: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

**Courts Legislation Amendment (Judicial Officers) Act 2013, No. 63/2013**

*Assent Date:* 6.11.13  
*Commencement Date:* S. 96 on 1.2.14: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

**Emergency Management Act 2013, No. 73/2013**

*Assent Date:* 3.12.13  
*Commencement Date:* S. 101 on 1.7.14: Special Gazette (No. 148) 13.5.14  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

**Education and Training Reform Amendment (Dual Sector Universities) Act  
2013, No. 76/2013**

*Assent Date:* 17.12.13  
*Commencement Date:* S. 26 on 1.1.14: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

**Court Services Victoria Act 2014, No. 1/2014**

*Assent Date:* 11.2.14  
*Commencement Date:* Ss 59–62 on 1.7.14: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

**Public Administration Amendment (Public Sector Improvement) Act 2014,  
No. 6/2014**

*Assent Date:* 11.2.14  
*Commencement Date:* Ss 3–13, 19–23 on 1.4.14: Special Gazette (No. 65)  
4.3.14 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Public Administration Act 2004**

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**Game Management Authority Act 2014, No. 24/2014**

*Assent Date:* 8.4.14  
*Commencement Date:* S. 81 on 1.7.14: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Mental Health Act 2014, No. 26/2014**

*Assent Date:* 8.4.14  
*Commencement Date:* S. 455(Sch. item 24) on 1.7.14: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 135) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

**Privacy and Data Protection Act 2014, No. 60/2014**

*Assent Date:* 2.9.14  
*Commencement Date:* S. 140(Sch. 3 item 38) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Administration Act 2004**

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### 3. Explanatory Details

No entries at date of publication.