

Reprint  
as at 19 April 2016



## State Sector Act 1988

Public Act 1988 No 20  
Date of assent 30 March 1988  
Commencement see section 1(2)

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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**Title** *[Repealed]*

Title: repealed, on 18 July 2013, by section 4 of the State Sector Amendment Act 2013 (2013 No 49).

**1 Short Title and commencement**

- (1) This Act may be cited as the State Sector Act 1988.
- (2) This Act shall come into force on 1 April 1988.

**1A Purpose**

The purpose of this Act is to promote and uphold a State sector system that—

- (a) is imbued with the spirit of service to the community; and
- (b) operates in the collective interests of government; and
- (c) maintains appropriate standards of integrity and conduct; and
- (d) maintains political neutrality; and
- (e) is supported by effective workforce and personnel arrangements; and
- (f) meets good-employer obligations; and

- (g) is driven by a culture of excellence and efficiency; and
- (h) fosters a culture of stewardship.

Section 1A: inserted, on 18 July 2013, by section 5 of the State Sector Amendment Act 2013 (2013 No 49).

## 2 Interpretation

In this Act, unless the context otherwise requires,—

**agency** does not include an agency in the private sector

**applicable collective agreement** means the collective agreement that is binding on the relevant union and employer, at the relevant point of time in relation to an employee of the employer who is a member of the union

**appropriate Minister**, in relation to a department or departmental agency, means—

- (a) the Minister responsible for the department or departmental agency; or
- (b) where 2 or more Ministers are responsible for different functions of a department or departmental agency, the Minister responsible for the relevant function of the department or departmental agency

**chief executive**,—

- (a) in relation to a department, means, subject to section 44, the person holding office under section 31, as the chief executive of the department:
- (aa) in relation to a departmental agency, means the person holding office under section 31 as the chief executive of the departmental agency:
- (b) in relation to a tertiary education institution, means the person appointed as the chief executive of the institution

**collective agreement** means an employment agreement that is binding on 1 or more employers and 2 or more employees

**Commission** means the State Services Commission

**Commissioner** means the State Services Commissioner appointed under section 3

**conditions of employment**—

- (a) includes remuneration; but
- (b) does not include—
  - (i) allowances payable to employees serving outside New Zealand; or
  - (ii) other conditions of service of employees serving outside New Zealand

**Crown entity** has the meaning given to it by section 7 of the Crown Entities Act 2004

**Crown Research Institute** means a Crown Research Institute formed under the Crown Research Institutes Act 1992, or a Crown entity subsidiary of a



Crown Research Institute (within the meaning of Part 1 of the Crown Entities Act 2004)

**department** has the meaning given to it by section 27A

**departmental agency** has the meaning given to it by section 27A

**Deputy Commissioner** means the Deputy State Services Commissioner appointed under section 12

**education service** means—

- (a) service in the employment of—
  - (i) any State school; or
  - (ii) any integrated school within the meaning of the Private Schools Conditional Integration Act 1975; or
  - (iii) any tertiary education institution; or
  - (iv) any other educational institution for which a separate employer for the purposes of this Act is designated by any enactment or by the Minister:
- (b) service as a registered teacher in the employment of any free kindergarten association that controls a free kindergarten within the meaning of section 120 of the Education Act 1989:
- (c) service as a teacher in the employment of the Secretary under section 91N of the Education Act 1989

**employee**, in relation to the State services,—

- (a) means an employee in any part of the State services, whether paid by salary, wages, or otherwise; but
- (b) does not include any chief executive
  - (i) *[Repealed]*
  - (ii) *[Repealed]*

**employer**,—

- (a) in relation to any institution that is subject to Part 9 of the Education Act 1989, means—
  - (i) the Board of Trustees; or
  - (ii) where a Commissioner has been appointed under the Education Act 1989 to act in place of the Board of Trustees, that Commissioner:
- (b) in relation to any free kindergarten within the meaning of section 120 of the Education Act 1989, means the free kindergarten association by which that free kindergarten is controlled:
- (c) in relation to any tertiary education institution, means the chief executive of that institution:

- (d) in relation to any other institution, means—
- (i) the person or body designated by any enactment as the employer for the purposes of this Act in respect of that institution; and
  - (ii) where no such person or body is so designated, means any person or body designated for that purpose by the Minister:
- (e) in relation to the employment of a person as a teacher under section 91N of the Education Act 1989, means the Secretary (as defined in section 2(1) of that Act)

**employment agreement** means a contract of service

**host department** has the meaning given to it by section 27A

**individual employment agreement** means an employment agreement that is binding on only 1 employer and 1 employee who is not bound by a collective agreement that binds the employer

**key position** has the meaning given to it in section 50(2)

**lockout** has the meaning given to it by section 82 of the Employment Relations Act 2000

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**Minister** means the Minister of State Services

**ministerial staff** means employees (including acting, temporary, or casual employees) who are employed on events-based employment agreements—

- (a) by the department that is responsible for the employment of ministerial staff across all Ministers' offices; and
- (b) to work directly for a Minister in a Minister's office rather than in a department

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**Example**

The Hon Honour Able's ministerial staff includes 1 Senior Private Secretary, 1 Ministerial Secretary, 1 Ministerial Adviser, 1 Press Secretary, and 1 Private Secretary. An event that could terminate the staff's events-based agreement is Minister Able no longer holding her Ministerial portfolio.

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**outcome**—

- (a) means a state or condition of society, the economy, or the environment; and
- (b) includes a change in that state or condition

**Public Service** means the Public Service as defined in section 27

**remuneration** includes—

- (a) salary, wages, and other payments, whether in the form of bonuses or otherwise, in return for services; and
- (b) benefits and other emoluments (whether in money or not) in return for services

**State services—**

- (a) means all instruments of the Crown in respect of the Government of New Zealand, whether departments, corporations, agencies, or other instruments; and
- (ab) includes a Crown entity; and
- (aba) organisations named or described in Schedule 4, and companies named in Schedule 4A, of the Public Finance Act 1989; and
- (ac) includes a Crown Research Institute; and
- (b) includes the education service; but
- (c) does not include—
  - (i) the Governor-General; or
  - (ii) any member of the Executive Council; or
  - (iii) any Minister of the Crown; or
  - (iv) any member of Parliament; or
  - (v) any corporation listed in Schedule 1 of the State-Owned Enterprises Act 1986; or
  - (vi) any tertiary education institution

**stewardship** means active planning and management of medium- and long-term interests, along with associated advice

**strike** has the meaning given to it by section 81 of the Employment Relations Act 2000

**tertiary education institution** means an institution within the meaning of section 159(1) of the Education Act 1989

**union** means a union registered under Part 4 of the Employment Relations Act 2000.

Section 2: substituted, on 15 May 1991, by section 2(1) of the State Sector Amendment Act 1991 (1991 No 31).

Section 2 **agency**: inserted, on 25 January 2005, by section 4(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **applicable collective agreement**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **applicable collective employment contract**: repealed, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **appropriate Minister**: amended, on 18 July 2013, by section 6(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **appropriate Minister** paragraph (a): amended, on 18 July 2013, by section 6(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **appropriate Minister** paragraph (b): amended, on 18 July 2013, by section 6(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **chief executive** paragraph (aa): inserted, on 18 July 2013, by section 6(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **chief executive** paragraph (b): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **collective agreement**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **collective employment contract**: repealed, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **college of education**: repealed, on 25 January 2005, by section 17(a) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **Crown entity**: replaced, on 18 July 2013, by section 6(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **Crown Research Institute**: inserted, on 25 January 2005, by section 4(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **department**: replaced, on 18 July 2013, by section 6(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **departmental agency**: inserted, on 18 July 2013, by section 6(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **education service**: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **education service** paragraph (a)(iii): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **education service** paragraph (b): amended, on 1 February 2002, by section 83 of the Education Standards Act 2001 (2001 No 88).

Section 2 **education service** paragraph (c): added, on 1 February 2002, by section 83 of the Education Standards Act 2001 (2001 No 88).

Section 2 **employee** paragraph (b): amended, on 18 July 2013, by section 6(5)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **employee** paragraph (b)(i): repealed, on 18 July 2013, by section 6(5)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **employee** paragraph (b)(ii): repealed, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **employer** paragraph (a)(ii): amended, on 22 October 2003, by section 3 of the State Sector Amendment Act (No 2) 2003 (2003 No 98).

Section 2 **employer** paragraph (b): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **employer** paragraph (b): amended, on 1 February 2002, by section 83 of the Education Standards Act 2001 (2001 No 88).

Section 2 **employer** paragraph (c): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **employer** paragraph (e): added, on 1 February 2002, by section 83 of the Education Standards Act 2001 (2001 No 88).

Section 2 **employment agreement**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **employment contract**: repealed, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **health service**: repealed, on 1 January 2001, by section 108(a) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

Section 2 **host department**: inserted, on 18 July 2013, by section 6(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **individual employment agreement**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **individual employment contract**: repealed, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **key position**: inserted, on 18 July 2013, by section 6(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **lockout**: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2 **ministerial staff**: inserted, on 18 July 2013, by section 6(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **outcome**: inserted, on 18 July 2013, by section 6(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **polytechnic**: repealed, on 25 January 2005, by section 17(a) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **senior executive service**: repealed, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **State services** paragraph (ab): inserted, on 25 January 2005, by section 4(3) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **State services** paragraph (aba): inserted, on 18 July 2013, by section 6(6) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **State services** paragraph (ac): inserted, on 25 January 2005, by section 4(3) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **State services** paragraph (b): amended, on 1 January 2001, by section 108(b) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

Section 2 **State services** paragraph (c)(vi): substituted, on 25 January 2005, by section 4(4) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **stewardship**: inserted, on 18 July 2013, by section 6(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 2 **strike**: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **tertiary education institution**: inserted, on 25 January 2005, by section 4(5) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 2 **union**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **university**: repealed, on 25 January 2005, by section 17(a) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## 2A Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Section 2A: inserted, on 18 July 2013, by section 7 of the State Sector Amendment Act 2013 (2013 No 49).

## **Part 1**

### **State Services Commissioner**

Part 1: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

#### **3 State Services Commissioner**

There shall be an officer to be called the State Services Commissioner, who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister.

Section 3: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

#### *Role, functions, duties, and powers of Commissioner*

Heading: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Heading: amended, on 18 July 2013, by section 8 of the State Sector Amendment Act 2013 (2013 No 49).

#### **4 Commissioner to be chief executive of State Services Commission**

The Commissioner shall be the chief executive of the department of State known as the State Services Commission.

Section 4: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

#### **4A Role of Commissioner**

The Commissioner's role is to provide leadership and oversight of the State services so as to ensure the purpose of this Act is carried out, including by—

- (a) promoting the spirit of service to the community; and
- (b) promoting the spirit of collaboration among agencies; and
- (c) identifying and developing high-calibre leaders; and
- (d) working with State services leaders to ensure that the State services maintain high standards of integrity and conduct and are led well and are trusted; and
- (e) overseeing workforce and personnel matters in the State services; and
- (f) advising on the design and capability of the State services; and
- (g) evaluating the performance of Public Service leaders, including the extent to which they carry out the purpose of this Act; and

- (h) supporting the efficient, effective, and economical achievement of good outcomes by the State services; and
- (i) promoting a culture of stewardship in the State services.

Section 4A: inserted, on 18 July 2013, by section 9 of the State Sector Amendment Act 2013 (2013 No 49).

## **5 Duty of Commissioner to act independently**

Except as provided in sections 35, 36, 38, and 39, in matters relating to decisions on individual Public Service chief executives, the Commissioner shall not be responsible to the Minister but shall act independently.

Section 5: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 5: amended, on 18 July 2013, by section 10 of the State Sector Amendment Act 2013 (2013 No 49).

## **6 Functions of Commissioner**

For the purpose of carrying out the Commissioner's role, the principal functions of the Commissioner are to—

- (a) review the State sector system in order to advise on possible improvements to agency, sector, and system-wide performance; and
- (b) review governance and structures across all areas of government, in order to advise on—
  - (i) the allocation and transfer of functions and powers; and
  - (ii) the cohesive delivery of services; and
  - (iii) the establishment, amalgamation, and disestablishment of agencies; and
- (c) review the performance of each department and each departmental agency; and
- (d) appoint leaders of the Public Service, which includes—
  - (i) acting as the employer of chief executives of departments and chief executives of departmental agencies; and
  - (ii) reviewing the performance of chief executives of departments and chief executives of departmental agencies; and
- (e) promote leadership capability in departments and other agencies; and
- (f) promote strategies and practices concerning government workforce capacity and capability; and
- (g) promote good-employer obligations in the Public Service; and
- (h) promote and reinforce standards of integrity and conduct in the State services; and
- (i) promote transparent accountability in the State services; and

- (j) exercise such other functions with respect to the administration and management of the Public Service as the Prime Minister from time to time directs (not being functions conferred by this Act or any other Act on a chief executive other than the Commissioner).

Section 6: replaced, on 18 July 2013, by section 11 of the State Sector Amendment Act 2013 (2013 No 49).

## **7 Powers of Commissioner**

The Commissioner shall have all such powers as are reasonably necessary or expedient to enable the Commissioner to carry out the functions and duties imposed upon the Commissioner under this Act or any other enactment.

Section 7: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **8 Power of Commissioner to conduct inspections and investigations**

- (1) This section applies when the Commissioner is carrying out his or her functions in respect of the Public Service.
- (2) The Commissioner may conduct any inspections and investigations, and make and receive any reports, that the Commissioner considers necessary or the Minister directs.

Section 8: substituted, on 25 January 2005, by section 6 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 8(1): replaced, on 18 July 2013, by section 12 of the State Sector Amendment Act 2013 (2013 No 49).

## **9 Power to obtain information**

- (1) The Commissioner may require, by written notice, any agency in respect of which the Commissioner is carrying out his or her functions, to supply to the Commissioner information concerning the agency's activities.
- (2) The agency to which the notice is given must comply with the notice, and must keep all records that are necessary to enable it to comply with the notice.
- (3) This section does not limit any Act that imposes a prohibition or restriction on the availability of any information.

Section 9: substituted, on 25 January 2005, by section 7 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 9(1): amended, on 18 July 2013, by section 13(1)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 9(1): amended, on 18 July 2013, by section 13(1)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 9(1): amended, on 18 July 2013, by section 13(1)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 9(2): amended, on 18 July 2013, by section 13(2) of the State Sector Amendment Act 2013 (2013 No 49).



**10 Power to enter premises**

- (1) For the purpose of carrying out the functions of the Commissioner, the Commissioner or any person specifically or generally authorised in writing in that behalf by the Commissioner, may from time to time—
  - (a) enter the premises of any department; or
  - (b) require the production of any information, documents, or files in the custody of any department, and examine any such information, documents, or files; or
  - (c) require any member of the staff of any department to answer questions for the purpose of enabling the Commissioner to carry out the functions assigned to the Commissioner.
- (2) Every written authorisation under subsection (1) shall contain—
  - (a) a reference to this section; and
  - (b) the full name of the authorised person; and
  - (c) a statement of the powers conferred on the authorised person by subsection (1).
- (3) The power to enter premises pursuant to subsection (1) shall be subject to the following conditions:
  - (a) entry shall be made only by the Commissioner or by a person specifically or generally authorised in writing by the Commissioner;
  - (b) reasonable notice of the intention to enter shall be given;
  - (c) entry shall be made at reasonable times;
  - (d) the person entering shall carry—
    - (i) evidence of that person's identity; and
    - (ii) either evidence that that person is the Commissioner or that person's written authorisation under subsection (1);
  - (e) the person entering shall, on first entering the premises, and, if requested, at any subsequent time, produce to a representative of the department the evidence referred to in paragraph (d).
- (4) Every person shall have the same privileges in relation to—
  - (a) the production of information, documents, and files; and
  - (b) the furnishing of any information or particulars; and
  - (c) the answering of questions—under this section as witnesses have in courts of law.
- (5) No person shall exercise any of the powers conferred by paragraphs (a) to (c) of subsection (1) unless the Commissioner or that person has first given the chief executive of the department the opportunity of consulting with the Commissioner or that person about the exercise of those powers.

- (6) Nothing in this section derogates from any enactment that imposes a prohibition or restriction on—
- (a) the availability of any information; or
  - (b) the production or examination of any information, documents, or files.

Section 10: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **11 Exercise of functions and powers in respect of other State services**

- (1) The Prime Minister may from time to time direct the Commissioner in writing, to carry out, in respect of any part of the State services that does not form part of the Public Service, any of the functions and powers conferred on the Commissioner by any provision of sections 6 to 10.
- (2) Sections 6 to 10 shall apply, for the purposes of any direction under subsection (1), with all necessary modifications and as if the part of the State services to which the direction relates were a department.
- (3) The Commissioner shall comply with that direction and shall have all necessary powers to enable the Commissioner to do so.
- (4) The Commissioner may, if requested by the head of any part of the State services, and must, if requested by the Minister in charge of, or responsible for, any part of the State services, exercise in respect of that part of the State services any of the functions and powers that the Commissioner may exercise in respect of departments under any provision of sections 6 to 8.
- (5) Nothing in this section—
- (a) limits or affects any provision of this or any other Act; or
  - (b) affects or prevents the exercise by any part of the State services that does not form part of the Public Service, or by any officer or employee of any such part of the State services, of any function or power conferred on or belonging to any such part of the State services or any such officer or employee.
- (6) The Commissioner may, if requested by the head of any part of the State services that does not form part of the Public Service, or of any corporation listed in Schedule 1 of the State-Owned Enterprises Act 1986, provide assistance in respect of the conditions of employment of its employees.

Section 11: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 11(4): substituted, on 25 January 2005, by section 8(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 11(5)(a): amended, on 25 January 2005, by section 8(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 11(6): added, on 25 January 2005, by section 8(3) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **12 Deputy State Services Commissioner**

- (1) There shall be an officer to be called the Deputy State Services Commissioner, who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister.
- (2) Subject to the control of the Commissioner, the Deputy Commissioner shall have and may exercise all the functions, duties, and powers of the Commissioner.
- (3) On the occurrence from any cause of a vacancy in the office of Commissioner (whether by reason of death, resignation, or otherwise), and in the case of absence from duty of the Commissioner (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Commissioner shall have and may exercise all the functions, duties, and powers of the Commissioner.
- (4) The fact that the Deputy Commissioner exercises any function, duty, or power of the Commissioner shall, in the absence of proof to the contrary, be conclusive evidence of his or her authority to do so.

Section 12: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **13 Term of office**

- (1) The Commissioner and the Deputy Commissioner shall each be appointed for such term, not exceeding 5 years, as shall be specified in the Order in Council by which the Commissioner or the Deputy Commissioner is appointed.
- (2) The Commissioner and the Deputy Commissioner shall each be eligible for re-appointment from time to time.
- (3) Where a person who is employed in the State services is appointed as the Commissioner or as the Deputy Commissioner, that person's term of office as Commissioner or Deputy Commissioner shall be deemed, for the purposes of—
  - (a) the Government Superannuation Fund Act 1956; and
  - (b) appointment to any position in the State services on the termination of that person's service as Commissioner or Deputy Commissioner; and
  - (c) entitlement to leave of absence,—

to be continuous service in that part of the State services in which that person was employed at the date of that person's appointment as Commissioner or Deputy Commissioner.

Section 13: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **14 Acting Commissioner or acting Deputy Commissioner**

- (1) The Governor-General in Council, on the recommendation of the Prime Minister, may appoint an acting Commissioner or acting Deputy Commissioner to

act for the Commissioner or Deputy Commissioner (as applicable) in the event of—

- (a) the incapacity of the Commissioner or Deputy Commissioner by reason of illness or absence; or
  - (b) any reasonable cause that requires the Commissioner or Deputy Commissioner to stand down (whether temporarily or in respect of a particular matter).
- (2) Subsection (1) also applies where the Deputy Commissioner is performing or exercising the functions, duties, and powers of the Commissioner under section 12(3).
- (3) No appointment of an acting Commissioner or acting Deputy Commissioner, and no act done by an acting Commissioner or acting Deputy Commissioner, as such, shall in any proceedings be questioned on the ground that the occasion for his or her appointment had not arisen or had ceased.

Section 14: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 14(1): replaced, on 18 July 2013, by section 14 of the State Sector Amendment Act 2013 (2013 No 49).

Section 14(2): replaced, on 18 July 2013, by section 14 of the State Sector Amendment Act 2013 (2013 No 49).

## **15 Remuneration and expenses of Commissioner and Deputy Commissioner**

- (1) The Commissioner and the Deputy Commissioner shall be paid—
- (a) such remuneration as may from time to time be determined in each case by the Remuneration Authority; and
  - (b) such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time in each case by the Minister of Finance.
- (2) Subject to the Remuneration Authority Act 1977, any determination made under subsection (1) may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before, on, or after the date of the making of the determination.
- (3) Every determination made under subsection (1) in respect of which no date is specified as aforesaid shall come into force on the date of the making of the determination.

Section 15: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 15(1)(a): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

Section 15(2): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

## **16 Removal from office**

- (1) The Commissioner and the Deputy Commissioner may be suspended or removed from office in accordance with the following provisions of this section and not otherwise.
- (2) The Governor-General may suspend the Commissioner or the Deputy Commissioner from office for misbehaviour or incompetence, but the Commissioner or the Deputy Commissioner shall not be removed from office except as provided in this section.
- (3) The Governor-General shall cause to be laid before the House of Representatives a full statement of the grounds of any suspension within 7 sitting days after the date of that suspension.
- (4) Unless the House of Representatives, within 21 days from the date on which the statement in respect of the Commissioner or Deputy Commissioner suspended under this section has been laid before it, declares by resolution that the Commissioner or Deputy Commissioner, as the case may be, ought to be removed from office, the Commissioner or Deputy Commissioner, as the case may be, shall be deemed to be restored to office as from the date of his or her suspension; and, if the House of Representatives within the said time does so declare, the Commissioner or Deputy Commissioner, as the case may be, shall be removed by the Governor-General from the date of the suspension.
- (5) Unless the Governor-General in Council otherwise directs, the Commissioner or Deputy Commissioner who has been removed from office under this section shall not be entitled to be reappointed to the State services and shall not be entitled to a retiring allowance under the Government Superannuation Fund Act 1956.

Section 16: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **17 Vacation of office**

- (1) Any person who holds office as the Commissioner or the Deputy Commissioner shall be deemed to have vacated office if—
  - (a) without the approval of the Governor-General that person—
    - (i) engages during his or her term of office in any paid employment or business other than the duties of his or her office; or
    - (ii) is appointed to and accepts any other office or position in the State services:
  - (b) that person becomes bankrupt, compounds with his or her creditors, or makes an assignment of his or her salary for their benefit:
  - (c) that person absents himself or herself from duty except with the authority of the Governor-General:

- (d) that person resigns in writing under his or her hand addressed to the Governor-General.
- (2) Notwithstanding anything in this section, the Commissioner or the Deputy Commissioner may act temporarily in any position in the State services that is for the time being vacant (including the position of chief executive).

Section 17: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 17(2): amended, on 18 July 2013, by section 15(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 17(2): amended, on 18 July 2013, by section 15(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 17(2): amended, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **18 Superannuation rights of Commissioner and Deputy Commissioner**

Where any person who is a contributor to the Government Superannuation Fund is appointed as Commissioner or Deputy Commissioner, that person shall, unless—

- (a) he or she is reappointed as Commissioner or Deputy Commissioner or, in the case of a person holding office as Deputy Commissioner, becomes the successor of the Commissioner; or
- (b) he or she is appointed to another office in the Government service (within the meaning of the Government Superannuation Fund Act 1956); or
- (c) he or she has ceased to be a contributor to the Government Superannuation Fund; or
- (d) he or she is not entitled under section 16(5) to a retiring allowance,—

be allowed to receive from the Fund an annual retiring allowance for the rest of his or her life computed in the manner prescribed by Part 2 or Part 2A of the Government Superannuation Fund Act 1956, notwithstanding that the Commissioner or Deputy Commissioner may not have attained the age or have had the length of service that would entitle him or her in accordance with the terms of that Act to a retiring allowance.

Section 18: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **19 Annual report**

- (1) The Commissioner shall, as soon as practicable after the end of each financial year, furnish to the Minister a report on the operations of the Commissioner for that year, and on such other matters affecting the State services as the Commissioner thinks fit.
- (2) The report must be presented and published in accordance with section 44 of the Public Finance Act 1989 as if it were a department's annual report.

Section 19: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 19(2): substituted, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

## **20 Power to incorporate annual report of Commission in Commissioner's annual report**

The Commissioner may incorporate in his or her report under section 19 in respect of any financial year the report required by section 43 of the Public Finance Act 1989 on the operations of the Commission for that financial year.

Section 20: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 20: amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

## **21 Advisory committees**

- (1) The Commissioner may from time to time appoint such advisory committees as the Commissioner considers appropriate to assist the Commissioner in carrying out any of the functions of the Commissioner.
- (2) The Commissioner may authorise any advisory committee appointed under this section to make such enquiries or to conduct such research or to make such reports as may assist the efficient carrying out of the functions of the Commissioner.
- (3) In determining the membership of any advisory committee, the Commissioner shall have due regard to the nature of the community interest in the particular matter or matters to be addressed by that advisory committee.

Section 21: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **22 Remuneration of advisory committees**

- (1) The Commissioner shall pay persons appointed to any advisory committee under section 21, for services rendered by them, fees at such rates as the Commissioner thinks fit and may separately reimburse them for expenses reasonably incurred in rendering services for the Commissioner.
- (2) No person shall be deemed to be employed in the service of Her Majesty by reason of appointment to an advisory committee under section 21.

Section 22: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **23 Delegation of functions or powers**

- (1) The Commissioner may from time to time, either generally or particularly, delegate to any person or persons any of the functions or powers of the Commissioner under this Act or any other Act, including functions or powers delegated to the Commissioner under any Act.

- (2) Every delegation under this section shall be in writing.
- (3) No delegation under this section shall include—
  - (a) the power to delegate under this section; or
  - (b) the Commissioner's powers under sections 35 and 36 (which relate to the appointment and reappointment of chief executives); or
  - (c) the Commissioner's powers under section 39 (which relates to the removal from office of a chief executive).
  - (d) *[Repealed]*
  - (e) *[Repealed]*
- (4) In any case where the Commissioner has, pursuant to subsection (1), delegated any of the functions or powers of the Commissioner to any person, that person may, with the prior approval in writing of the Commissioner, delegate such of those functions or powers as the Commissioner approves to any other person or to the holder for the time being of any specified office in the State services.
- (5) Subject to any general or special directions given or conditions imposed by the Commissioner, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (6) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (7) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or of specified classes of offices.
- (8) No such delegation shall affect or prevent the exercise of any function or power by the Commissioner nor shall any such delegation affect the responsibility of the Commissioner for the actions of any person acting under the delegation.

Section 23: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 23(3)(c): amended, on 18 July 2013, by section 16 of the State Sector Amendment Act 2013 (2013 No 49).

Section 23(3)(d): repealed, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 23(3)(e): repealed, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **24 Revocation of delegations**

- (1) Every delegation under section 23 shall be revocable in writing at will.
- (2) Any such delegation shall, until it is revoked, continue in force according to its tenor, notwithstanding that the Commissioner by whom it was made may have



ceased to hold office and shall continue to have effect as if made by the successor in office of that Commissioner.

Section 24: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **25 Power to summon witnesses**

- (1) For the purposes of carrying out the duties and functions imposed on the Commissioner by this Act or any other Act, the Commissioner shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon commissions of inquiry by the Commissions of Inquiry Act 1908, and the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.
- (2) Any investigation or inquiry that the Commissioner is empowered to conduct under this Act or any other Act may be conducted by the Commissioner or by any person specifically appointed by the Commissioner to conduct the investigation or inquiry and to report thereon to the Commissioner; and, for the purposes of any such investigation or inquiry, the powers and authority conferred on the Commissioner by subsection (1) shall attach to and may be exercised by such other persons so appointed.

Section 25: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **26 Fees and expenses in connection with investigation or inquiry**

Notwithstanding anything in the Commissions of Inquiry Act 1908, the Commissioner may authorise the payment, out of money appropriated by Parliament for the purpose, of fees and expenses incurred in connection with any such investigation or inquiry.

Section 26: substituted, on 19 December 1989, by section 3 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **Part 2 The Public Service**

### **27 Public Service defined**

The Public Service comprises departments (and any departmental agencies that are part of those departments).

Section 27: replaced, on 18 July 2013, by section 17 of the State Sector Amendment Act 2013 (2013 No 49).

### **27A Meaning of department, host department, and departmental agency**

- (1) In this Act,—

**department** means a department specified in Schedule 1

**departmental agency** means a departmental agency specified in the first column of Schedule 1A, which is part of its host department

**host department** means the department identified as the host department of a departmental agency in the second column of Schedule 1A.

- (2) Unless the context otherwise requires, every reference in this or any other enactment to a department includes any departmental agency that is part of the department.

Section 27A: inserted, on 18 July 2013, by section 17 of the State Sector Amendment Act 2013 (2013 No 49).

## **27B Relationship between departments and departmental agencies**

Except as provided in this or any other enactment,—

- (a) the functions, duties, and powers of a departmental agency may be determined by the appropriate Minister of the departmental agency in conjunction with the appropriate Minister of the host department; and
- (b) the working arrangements between a departmental agency and its host department must be agreed by their respective chief executives and approved by their appropriate Ministers.

Section 27B: inserted, on 18 July 2013, by section 17 of the State Sector Amendment Act 2013 (2013 No 49).

## **28 Delegation of functions or powers of appropriate Minister**

- (1) The appropriate Minister in relation to a department or departmental agency may from time to time, either generally or particularly, delegate to the chief executive of that department or departmental agency all or any of the Minister's functions and powers under this Act or any other Act, including functions or powers delegated to the Minister under this Act or any other Act.
- (2) Every delegation under this section shall be in writing.
- (3) No delegation under this section shall include the power to delegate under this section.
- (4) The power of the appropriate Minister to delegate under this section—
- (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but
- (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (5) Subject to any general or special directions given or conditions imposed by the appropriate Minister, the chief executive may exercise any functions or powers so delegated to the chief executive in the same manner and with the same effect as if they had been conferred on the chief executive directly by this section and not by delegation.
- (6) Where the chief executive purports to act pursuant to any delegation under this section, the chief executive shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

- (7) No such delegation shall affect or prevent the exercise of any function or power by the appropriate Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.

Section 28(1): amended, on 18 July 2013, by section 18 of the State Sector Amendment Act 2013 (2013 No 49).

## **29 Revocation of delegations**

- (1) Every delegation under section 28 shall be revocable in writing at will.
- (2) Any such delegation, until it is revoked, shall continue in force according to its tenor.
- (3) In the event of the appropriate Minister by whom any such delegation has been made ceasing to hold office,—
- (a) it shall continue to have effect as if made by the person for the time being holding office as the appropriate Minister; and
- (b) the chief executive shall forthwith advise the then appropriate Minister of the terms of any such delegation.
- (4) In the event of the chief executive to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as chief executive or, if there is no chief executive in office or if the chief executive is absent from duty, to the person for the time being directed to act in the place of the chief executive.

## **30 Annual reports of departments**

*[Repealed]*

Section 30: repealed, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

## **30A Amendment of Schedule 1 and Schedule 1A to reflect reorganisations within Public Service**

- (1) The Governor-General may, by Order in Council, amend Schedule 1 if a department is disestablished or its name is changed or a new department is established.
- (1A) The Governor-General may, by Order in Council, amend Schedule 1A if a departmental agency is disestablished, if its name, its host department's name, or its host department is changed, or if a new departmental agency is established.
- (2) To avoid doubt, this section does not limit the need for a department or departmental agency that has been established by an Act of Parliament to be disestablished or have its name changed by an Act of Parliament.

Section 30A: inserted, on 2 August 2003, by section 4 of the State Sector Amendment Act 2003 (2003 No 41).

Section 30A heading: amended, on 18 July 2013, by section 19(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30A(1): amended, on 18 July 2013, by section 19(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30A(1A): inserted, on 18 July 2013, by section 19(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30A(2): amended, on 18 July 2013, by section 19(4)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30A(2): amended, on 18 July 2013, by section 19(4)(b) of the State Sector Amendment Act 2013 (2013 No 49).

### **30B Effect of reorganisations within Public Service on employees**

A transfer of functions from one department (**Department A**) to another department (**Department B**) does not transfer a chief executive or employee of Department A to Department B, despite sections 30H(2) and (3) and 30I(2) and (3).

Section 30B: inserted, on 2 August 2003, by section 4 of the State Sector Amendment Act 2003 (2003 No 41).

### **30C Application of employee provisions to reorganisations between departments**

*[Repealed]*

Section 30C: repealed, on 18 July 2013, by section 20 of the State Sector Amendment Act 2013 (2013 No 49).

### **30D Application of employee provisions to transfers from Crown entities to departments**

*[Repealed]*

Section 30D: repealed, on 18 July 2013, by section 20 of the State Sector Amendment Act 2013 (2013 No 49).

### **30E Restriction of compensation for technical redundancy arising from reorganisations**

*[Repealed]*

Section 30E: repealed, on 18 July 2013, by section 20 of the State Sector Amendment Act 2013 (2013 No 49).

### **30F Reappointment of employees following reorganisations**

*[Repealed]*

Section 30F: repealed, on 18 July 2013, by section 20 of the State Sector Amendment Act 2013 (2013 No 49).

### **30G Application of collective agreements to employees following reorganisations**

*[Repealed]*

Section 30G: repealed, on 18 July 2013, by section 20 of the State Sector Amendment Act 2013 (2013 No 49).

**30H Consequential changes to references to departments or departmental agencies or employees of departments following reorganisations**

- (1) If an enactment or other thing refers to a particular department or departmental agency and that reference is no longer appropriate because the department's or departmental agency's name has changed, the reference must be read as a reference to the department or departmental agency under its new name.
- (2) If an enactment or other thing refers to a particular department or departmental agency and that reference is no longer appropriate because the department or departmental agency has been disestablished, the reference must be read as a reference to the new responsible department or new responsible departmental agency.
- (3) If an enactment or other thing refers to a particular department or departmental agency and that reference is no longer appropriate because functions have been transferred elsewhere in the Public Service, the reference must be read as a reference to the new responsible department or new responsible departmental agency.
- (3A) If an enactment or other thing refers to employees of a particular department and that reference is no longer appropriate because the department's name has changed, the reference must be read as a reference to the employees of the department under its new name.
- (3B) If an enactment or other thing refers to employees of a particular department and that reference is no longer appropriate because the department has been disestablished, the reference must be read as a reference to the employees of the new responsible department.
- (3C) If an enactment or other thing refers to employees of a particular department and that reference is no longer appropriate because functions have been transferred elsewhere in the Public Service, the reference must be read as a reference to the employees who perform the relevant functions.
- (4) In this section, the **new responsible department or new responsible departmental agency** is the department or departmental agency to which responsibility for the matter to which the reference relates has been transferred.

Section 30H: inserted, on 2 August 2003, by section 4 of the State Sector Amendment Act 2003 (2003 No 41).

Section 30H heading: amended, on 18 July 2013, by section 21(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H heading: amended, on 18 July 2013, by section 21(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(1): amended, on 18 July 2013, by section 21(3)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(1): amended, on 18 July 2013, by section 21(3)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(1): amended, on 18 July 2013, by section 21(3)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(2): amended, on 18 July 2013, by section 21(4)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(2): amended, on 18 July 2013, by section 21(4)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(2): amended, on 18 July 2013, by section 21(4)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(2): amended, on 18 July 2013, by section 21(4)(d) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(3): amended, on 18 July 2013, by section 21(5)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(3): amended, on 18 July 2013, by section 21(5)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(3): amended, on 18 July 2013, by section 21(5)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(3A): inserted, on 18 July 2013, by section 21(6) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(3B): inserted, on 18 July 2013, by section 21(6) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(3C): inserted, on 18 July 2013, by section 21(6) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(4): amended, on 18 July 2013, by section 21(7)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30H(4): amended, on 18 July 2013, by section 21(7)(b) of the State Sector Amendment Act 2013 (2013 No 49).

### **30I Consequential changes to references to chief executives following reorganisations**

- (1) If an enactment or other thing refers to a particular designation of a chief executive or a chief executive of a particular department or departmental agency and that reference is no longer appropriate because the designation or name of the department or departmental agency has changed, the reference must be read as a reference to the chief executive under the new designation or the department's or departmental agency's new name (as applicable).
- (2) If an enactment or other thing refers to a chief executive of a particular department or departmental agency and that reference is no longer appropriate because the department or departmental agency has been disestablished, the reference must be read as a reference to the new responsible chief executive.
- (3) If an enactment or other thing refers to a chief executive of a particular department or departmental agency and that reference is no longer appropriate because functions have been transferred elsewhere in the Public Service or between chief executives, the reference must be read as a reference to the new responsible chief executive.
- (4) In this section, the **new responsible chief executive** is the chief executive to whom, or to whose department or departmental agency, responsibility for the matter to which the reference relates has been transferred.

Section 30I: inserted, on 2 August 2003, by section 4 of the State Sector Amendment Act 2003 (2003 No 41).

Section 30I(1): amended, on 18 July 2013, by section 22(1)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(1): amended, on 18 July 2013, by section 22(1)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(1): amended, on 18 July 2013, by section 22(1)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(2): amended, on 18 July 2013, by section 22(2)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(2): amended, on 18 July 2013, by section 22(2)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(2): amended, on 18 July 2013, by section 22(2)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(3): amended, on 18 July 2013, by section 22(3)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(3): amended, on 18 July 2013, by section 22(3)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30I(4): amended, on 18 July 2013, by section 22(4) of the State Sector Amendment Act 2013 (2013 No 49).

### **30J Application of consequential changes to references**

- (1) Sections 30H and 30I—
  - (a) apply to things that are in force or existing at the time of the name change, disestablishment, or transfer of functions (whether coming into force, entered into, or created before or after the commencement of this section); and
  - (b) apply to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices.
- (2) Regulations made under section 30K may apply sections 30H and 30I to things also coming into force, entered into, or created during a transitional period after the relevant name change, disestablishment, or transfer of functions that is specified in those regulations.
- (3) To avoid doubt, sections 30H and 30I do not limit the need for a department that has been established by an Act of Parliament to have its name changed, be disestablished, or have statutory functions transferred by an Act of Parliament, and sections 30H and 30I apply in respect of that name change, disestablishment, or transfer only on and after that Act has given effect to it.
- (4) Sections 30H(1) and (2) and 30I(1) and (2) apply only on and after Schedule 1 is amended in respect of the relevant name change or disestablishment.
- (5) Sections 30H and 30I—
  - (a) apply to collective employment agreements subject to sections 30B and 30G; but
  - (b) do not apply to individual employment agreements.

Section 30J: inserted, on 2 August 2003, by section 4 of the State Sector Amendment Act 2003 (2003 No 41).

Section 30J(1)(a): amended, on 18 July 2013, by section 23(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30J(2): amended, on 18 July 2013, by section 23(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30J(3): amended, on 18 July 2013, by section 23(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30J(3): amended, on 18 July 2013, by section 23(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 30J(4): amended, on 18 July 2013, by section 23(1) of the State Sector Amendment Act 2013 (2013 No 49).

### **30K Other saving and transitional matters arising from reorganisations within Public Service**

The Governor-General may, by Order in Council, provide for savings and transitional matters connected with the disestablishment or change of name of a department, the transfer of functions between departments, or the establishment of a new department.

Section 30K: inserted, on 2 August 2003, by section 4 of the State Sector Amendment Act 2003 (2003 No 41).

Section 30K: amended, on 18 July 2013, by section 24 of the State Sector Amendment Act 2013 (2013 No 49).

### **30L Effect of reorganisations within Public Service**

- (1) The disestablishment or change of name of a department, the transfer of functions between departments, or the establishment of a new department does not affect—
  - (a) property, rights, or obligations of the Crown (whether or not in the name of the Crown or of a particular department, chief executive, or other person in a department); or
  - (b) the commencement or continuation of proceedings by or against the Crown (whether or not in the name of the Crown or of a particular department, chief executive, or other person in a department).
- (2) In this section, **property** means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal; and includes rights, interests, and claims of every kind in relation to property, however they arise.
- (3) This section does not limit sections 30A to 30K.
- (4) This section applies for the avoidance of doubt.

Section 30L: inserted, on 2 August 2003, by section 4 of the State Sector Amendment Act 2003 (2003 No 41).

Section 30L(1): amended, on 18 July 2013, by section 25 of the State Sector Amendment Act 2013 (2013 No 49).



## **Part 3**

### **Chief executives**

#### **31 Chief executives**

- (1) Each department and each departmental agency must have, as its administrative head, a chief executive.
- (2) Each chief executive shall be known—
  - (a) by the designation fixed by Act of Parliament in respect of that chief executive; or
  - (b) where the designation of a chief executive is not fixed by Act of Parliament, by the designation given to that chief executive from time to time by the Prime Minister.

Section 31(1): replaced, on 18 July 2013, by section 26 of the State Sector Amendment Act 2013 (2013 No 49).

#### **32 Principal responsibilities**

- (1) The chief executive of a department or departmental agency is responsible to the appropriate Minister for—
  - (a) the department's or departmental agency's carrying out the purpose of this Act; and
  - (b) the department's or departmental agency's responsiveness on matters relating to the collective interests of government; and
  - (c) the stewardship of the department or departmental agency, including of its medium- and long-term sustainability, organisational health, capability, and capacity to offer free and frank advice to successive governments; and
  - (d) the stewardship of—
    - (i) assets and liabilities on behalf of the Crown that are used by or relate to (as applicable) the department or departmental agency; and
    - (ii) the legislation administered by the department or departmental agency; and
  - (e) the performance of the functions and duties and the exercise of the powers of the chief executive or of the department or departmental agency (whether imposed by any enactment or by the policies of the Government); and
  - (f) the tendering of free and frank advice to Ministers; and
  - (g) the integrity and conduct of the employees for whom the chief executive is responsible; and

- (h) the efficient and economical delivery of the goods or services provided by the department or departmental agency and how effectively those goods or services contribute to the intended outcomes.
- (2) Except as provided in any other enactment,—
  - (a) the chief executive of a department is not responsible for the performance of functions or duties or the exercise of powers by that part of the department that comprises any departmental agency hosted by the department; and
  - (b) the chief executive of a departmental agency is responsible only for the performance of functions or duties or the exercise of powers by that part of the department that comprises the departmental agency.

Section 32: replaced, on 18 July 2013, by section 27 of the State Sector Amendment Act 2013 (2013 No 49).

### **33 Duty to act independently**

- (1) Despite section 32, in matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, discipline, or the cessation of the employment of any employee, or other matters),—
  - (a) the chief executive of a department is responsible for acting independently (and is not responsible to the appropriate Minister); and
  - (b) the chief executive of a departmental agency is responsible for acting independently (and is not responsible to the appropriate Minister or to the chief executive of the host department).
- (2) The independence provided in subsection (1) is subject to—
  - (a) the requirement in section 50(4) that a chief executive may only appoint an employee to a key position with the Commissioner’s agreement; and
  - (b) the requirement in section 59(5) that a chief executive have regard to the wishes of the relevant Minister in relation to decisions on ministerial staff.

Section 33: replaced, on 18 July 2013, by section 28 of the State Sector Amendment Act 2013 (2013 No 49).

### **34 Functions, responsibilities, duties, and powers**

- (1) The functions, responsibilities, duties, and powers imposed on or given to the chief executive of a department or departmental agency by this Act are in addition to those imposed on or given to that chief executive by or under any other Act.
- (2) The chief executive of a department or departmental agency shall have the powers necessary to carry out the functions, responsibilities, and duties imposed on that chief executive by or under this Act, as well as the powers necessary to carry out the functions, responsibilities, and duties imposed on that

chief executive or that department or departmental agency by or under any other Act.

Section 34(1): amended, on 18 July 2013, by section 29(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 34(2): amended, on 18 July 2013, by section 29(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 34(2): amended, on 18 July 2013, by section 29(2) of the State Sector Amendment Act 2013 (2013 No 49).

### **35 Appointment of chief executives**

- (1) Subject to sections 36, 37, and 44, each chief executive shall be appointed by the Commissioner in accordance with the provisions of this section.
- (2) Where there is a vacancy or an impending vacancy in the position of chief executive of a department or departmental agency, the Commissioner shall—
  - (a) inform the Minister of that vacancy or impending vacancy; and
  - (b) invite the Minister to inform the Commissioner of any matters that the Minister wishes the Commissioner to take into account in making an appointment to the position.
- (3) The Commissioner shall notify the vacancy or impending vacancy in such manner as the Commissioner thinks sufficient to enable suitably qualified persons to apply for the position.
- (4) A panel comprising—
  - (a) the Commissioner or Deputy Commissioner as chairperson; and
  - (b) the Deputy Commissioner or an employee of the Commissioner; and
  - (c) 1 or more persons to be appointed by the Commissioner after consultation with the appropriate Minister or appropriate Ministers,—shall be established in respect of each vacancy.
- (4AA) In relation to a vacancy or an impending vacancy in the position of chief executive of a departmental agency, the panel established under subsection (4) must also include the chief executive of the host department.
- (4A) The panel may—
  - (a) examine applicants for the position; and
  - (b) seek advice from such other sources as the panel considers relevant; and
  - (c) deliberate on the person to be recommended for appointment.
- (4B) Following the deliberations of the panel, the chairperson shall decide upon the person to be recommended to the Minister for appointment.
- (5) The chairperson may invite such other persons as the chairperson thinks fit to assist in deciding upon the person to be recommended for appointment, and any person so invited may take part in the examination of applicants or in the panel's deliberations on the matter or in both.

- (6) The chairperson shall forward to the Minister the name of the person decided upon under subsection (4B) as the person recommended for appointment to the position, together with full particulars of that person's qualifications.
- (7) The Minister shall refer the chairperson's recommendations to the Governor-General in Council.
- (8) The Governor-General in Council shall decide whether the chairperson's recommendation is to be accepted or declined.
- (9) The Minister shall inform the chairperson whether the chairperson's recommendation has been accepted or declined by the Governor-General in Council.
- (10) Where the chairperson's recommendation is accepted, the chairperson shall—
  - (a) appoint the person recommended; and
  - (b) announce publicly that the appointment has been made.
- (11) Where the chairperson's recommendation is declined, the following provisions shall apply:
  - (a) the Governor-General in Council may direct the chairperson to appoint a named person to the position:
  - (b) the Governor-General in Council shall not be required to comply with the preceding subsections of this section:
  - (c) notice of the making of an appointment pursuant to a direction under paragraph (a) shall be published in the *Gazette* as soon as practicable.
- (12) *[Repealed]*

Section 35(1): amended, on 18 July 2013, by section 30(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(1): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(2): amended, on 18 July 2013, by section 30(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(2): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(2)(b): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(3): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(4): substituted, on 19 December 1989, by section 5 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(4)(a): amended, on 18 July 2013, by section 30(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(4)(b): amended, on 18 July 2013, by section 30(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(4AA): inserted, on 18 July 2013, by section 30(5) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(4A): inserted, on 19 December 1989, by section 5 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(4A): amended, on 18 July 2013, by section 30(6) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(4B): inserted, on 19 December 1989, by section 5 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(4B): amended, on 18 July 2013, by section 30(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(5): substituted, on 19 December 1989, by section 5 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(5): amended, on 18 July 2013, by section 30(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(5): amended, on 18 July 2013, by section 30(8) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(6): substituted, on 19 December 1989, by section 5 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 35(6): amended, on 18 July 2013, by section 30(8) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(7): amended, on 18 July 2013, by section 30(9) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(8): amended, on 18 July 2013, by section 30(9) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(9): amended, on 18 July 2013, by section 30(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(9): amended, on 18 July 2013, by section 30(9) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(10): amended, on 18 July 2013, by section 30(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(10): amended, on 18 July 2013, by section 30(9) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(11): amended, on 18 July 2013, by section 30(9) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(11)(a): amended, on 18 July 2013, by section 30(7) of the State Sector Amendment Act 2013 (2013 No 49).

Section 35(12): repealed, on 18 July 2013, by section 30(10) of the State Sector Amendment Act 2013 (2013 No 49).

### **36 Reappointment of chief executives**

- (1) The Commissioner may recommend to the Minister that the existing chief executive of a department or departmental agency be reappointed for a further term.
- (1A) Section 35(7) to (10) apply (with any necessary modifications) to the recommendation under subsection (1) as if it were a recommendation under section 35(6).
- (2) The Commissioner may make a recommendation under subsection (1) without first notifying the impending vacancy or examining other applicants or establishing a panel under section 35(4).

Section 36: substituted, on 19 December 1989, by section 6 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 36(1): replaced, on 18 July 2013, by section 31 of the State Sector Amendment Act 2013 (2013 No 49).

Section 36(1A): inserted, on 18 July 2013, by section 31 of the State Sector Amendment Act 2013 (2013 No 49).

### **37 Appointment and reappointment of Government Statistician**

- (1) The Government Statistician shall be appointed by the Commissioner in accordance with the provisions of this section.
- (2) Subject to subsection (5), the Commissioner shall appoint the Government Statistician after subsections (2) to (5) of section 35 have been complied with, and must announce publicly that the appointment has been made.
- (3) Nothing in subsections (6) to (11) of section 35 or in section 36 shall apply in respect of the appointment or reappointment of the Government Statistician.
- (4) The Commissioner may from time to time reappoint the Government Statistician for a further term.
- (5) The Commissioner may reappoint the Government Statistician without first notifying the impending vacancy or examining other applicants.

Section 37(1): amended, on 18 July 2013, by section 32(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 37(1): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 37(2): amended, on 18 July 2013, by section 32(2)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 37(2): amended, on 18 July 2013, by section 32(2)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 37(2): amended, on 18 July 2013, by section 32(2)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 37(2): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 37(4): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 37(5): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

### **37A Transfer of chief executives**

- (1) The Commissioner may recommend to the Minister that a chief executive of a department or departmental agency be transferred into a vacancy or an impending vacancy in the position of chief executive in—
  - (a) that department or departmental agency (as applicable); or
  - (b) another department or departmental agency.
- (2) Section 35(7) to (10) apply (with any necessary modifications) to a recommendation under subsection (1) as if it were a recommendation under section 35(6).
- (3) Section 35(6) to (11) do not apply to a recommendation under subsection (1) if it relates to a transfer of a chief executive of a department or departmental

agency into a vacancy or an impending vacancy in the position of Government Statistician.

- (4) Before making a recommendation under subsection (1), the Commissioner must—
  - (a) believe on reasonable grounds that the transfer would be in the public interest; and
  - (b) obtain the chief executive's agreement to the transfer; and
  - (c) consult the appropriate Ministers.
- (5) The Commissioner may make a recommendation under subsection (1) without notifying the vacancy or impending vacancy or examining other applicants or establishing a panel under section 35(4).

Section 37A: inserted, on 18 July 2013, by section 33 of the State Sector Amendment Act 2013 (2013 No 49).

### **38 Conditions of employment of chief executives**

- (1AA) The Commissioner has, except as expressly provided to the contrary in this Act, the rights, powers, and duties of an employer in relation to chief executives.
- (1) Every chief executive shall be appointed for a term of not more than 5 years.
  - (2) Every chief executive shall be eligible for reappointment from time to time.
  - (3) Except where specific conditions of employment for a chief executive are provided in this Act, the conditions of employment of a chief executive shall be determined in each case by agreement between the Commissioner and the chief executive, but the Commissioner must consult the Prime Minister and the Minister of State Services about the conditions of employment before finalising those conditions of employment with the chief executive.
  - (4) In the case of the Government Statistician, the Commissioner shall not be required to obtain the agreement of the Prime Minister and the Minister of State Services before finalising the conditions of employment of the Government Statistician.

Section 38(1AA): inserted, on 18 July 2013, by section 34(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 38(3): amended, on 18 July 2013, by section 34(2)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 38(3): amended, on 18 July 2013, by section 34(2)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 38(3): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 38(4): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

**39 Removal from office**

- (1) The Commissioner may, with the agreement of the Governor-General in Council, for just cause or excuse, remove the chief executive of a department or departmental agency from office.
- (2) The Commissioner must consult the chief executive of the host department before removing a chief executive of a departmental agency under subsection (1).

Section 39(1): amended, on 18 July 2013, by section 35(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 39(1): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 39(2): inserted, on 18 July 2013, by section 35(2) of the State Sector Amendment Act 2013 (2013 No 49).

**40 Acting chief executive**

- (1) Where—
  - (a) there is a vacancy in the position of a chief executive; or
  - (b) a chief executive is absent from duty (from whatever cause arising) and that chief executive is unable to delegate his or her responsibilities under this Act to any other person under section 41,—

all or any of the functions, duties, and powers of the chief executive or pertaining to the position may be exercised and performed by—

- (c) a chief executive of another department or departmental agency; or
  - (d) *[Repealed]*
  - (e) any person,—

for the time being appointed by the Commissioner to exercise and perform them, whether the appointment has been made before the absence or vacancy occurs or while it continues.
- (1A) Where a new department or departmental agency is to be established on a certain date, the Commissioner may appoint as an acting chief executive any person the Commissioner considers suitable to exercise and perform all or any of the functions, duties, and powers of the chief executive of that new department or departmental agency.
  - (1B) The position of an acting chief executive appointed under subsection (1A) ceases to exist on the date a chief executive of the new department or departmental agency takes office after being appointed under section 35.
  - (2) No such appointment and no acts done by any person acting pursuant to any such appointment shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased, or on the ground that the person had not been appointed to the position of chief executive.



- (3) The Commissioner shall determine the conditions of employment that are to apply to any person appointed under subsection (1) or (1A) to exercise and perform any of the functions, duties, and powers of a chief executive.

Section 40(1): substituted, on 19 December 1989, by section 7 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 40(1): amended, on 18 July 2013, by section 36(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(1): amended, on 18 July 2013, by section 36(4)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(1): amended, on 18 July 2013, by section 36(4)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(1): amended, on 18 July 2013, by section 36(4)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(1)(c): amended, on 18 July 2013, by section 36(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(1)(d): repealed, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 40(1)(e): replaced, on 18 July 2013, by section 36(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(1A): inserted, on 18 July 2013, by section 36(5) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(1B): inserted, on 18 July 2013, by section 36(5) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(2): amended, on 18 July 2013, by section 36(6) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(3): amended, on 18 July 2013, by section 36(7)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(3): amended, on 18 July 2013, by section 36(7)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(3): amended, on 18 July 2013, by section 36(7)(c) of the State Sector Amendment Act 2013 (2013 No 49).

Section 40(3): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

#### **41 Delegation of functions or powers**

- (1) A Public Service chief executive may, either generally or particularly, delegate in writing to a person described in subsection (1A) or (2A) any of the functions or powers of the chief executive under this Act or any other Act (including functions or powers delegated to the chief executive under this Act or any other Act), except that—

- (a) the delegation of functions or powers delegated to the chief executive by a Minister requires the prior written approval of that Minister; and
- (b) the delegation of functions or powers delegated to the chief executive by the Commissioner requires the prior written approval of the Commissioner.

- (1A) The following persons may be a delegate under subsection (1) or a subdelegate under subsection (2):
- (a) another Public Service chief executive;
  - (b) a Public Service employee;
  - (c) an individual working in the Public Service as a contractor or as a seconded from elsewhere in the State services in relation to a function or power of the Public Service;
  - (d) the holder for the time being of any specified office in the Public Service.
- (2) A person to whom a function or power has been delegated under subsection (1) by a chief executive may, with the prior written approval of that chief executive, subdelegate the function or power to any other person described in subsection (1A).
- (2A) A Public Service chief executive may delegate under subsection (1) a clearly identified function or power to a person outside the Public Service (whether or not the person is within the State services), but only after—
- (a) obtaining the appropriate Minister's prior written approval; and
  - (b) satisfying himself or herself that any potential conflicts of interest will be avoided or managed.
- (2B) However, a delegate described in subsection (2A) may not subdelegate the delegated power or function under subsection (2).
- (2C) A delegation described in subsection (2A) must be noted, with a description of how effectively the delegated function or power was performed or exercised,—
- (a) in the case of a delegation made by the chief executive of a department, in the annual report of that department; or
  - (b) in the case of a delegation made by the chief executive of a departmental agency, in the annual report of that departmental agency.
- (2D) A delegate described in subsection (2A) must comply with the following obligations in relation to the performance of a delegated function or the exercise of a delegated power (in the same way as a delegate described in subsection (1A) must comply with them):
- (a) all relevant statutory obligations; and
  - (b) all relevant obligations in a code of conduct set by the Commissioner under section 57(2).
- (2E) Any information held by a delegate described in subsection (2A) in relation to the performance of a delegated function or the exercise of a delegated power is, for the purposes of the Official Information Act 1982 (*see* section 2(5) of that Act), deemed to be held by,—
- (a) in the case of a delegation made by the chief executive of a department, that department; or

- (b) in the case of a delegation made by the chief executive of a departmental agency, the host department of that departmental agency.
- (2F) In relation to the performance of a delegated function or the exercise of a delegated power, the Ombudsmen Act 1975 and the Official Information Act 1982 apply to a delegate described in subsection (2A) as if the delegate were an organisation named in Schedule 1 of the Ombudsmen Act 1975.
- (3) Subject to any general or special directions given or conditions imposed by the chief executive, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner, subject to the same restrictions, and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (4) The power of the chief executive to delegate under this section—
  - (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the chief executive's functions or powers; but
  - (b) shall not limit any power of delegation conferred on the chief executive by any other Act.
- (4A) Where a written document is used to inform a person of an action taken by a delegate described in subsection (2A), the document must—
  - (a) state that the action was taken by a delegate outside the Public Service; and
  - (b) give the delegate's name and office; and
  - (c) state that a copy of the instrument of delegation may be inspected at the chief executive's office.
- (5) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (6) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.
- (7) No such delegation shall affect or prevent the exercise of any function or power by the chief executive, nor shall any such delegation affect the responsibility of the chief executive for the actions of any person acting under the delegation.

Section 41(1): replaced, on 18 July 2013, by section 37(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(1A): inserted, on 18 July 2013, by section 37(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(2): replaced, on 18 July 2013, by section 37(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(2A): inserted, on 18 July 2013, by section 37(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(2B): inserted, on 18 July 2013, by section 37(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(2C): inserted, on 18 July 2013, by section 37(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(2D): inserted, on 18 July 2013, by section 37(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(2E): inserted, on 18 July 2013, by section 37(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(2F): inserted, on 18 July 2013, by section 37(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(3): amended, on 18 July 2013, by section 37(5) of the State Sector Amendment Act 2013 (2013 No 49).

Section 41(4A): replaced, on 5 December 2013, by section 4 of the State Sector Amendment Act (No 2) 2013 (2013 No 133).

## **42 Revocation of delegations**

- (1) Every delegation under section 41 shall be revocable in writing at will.
- (2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the chief executive by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that chief executive.

## **43 Review of performance of chief executive**

- (1) The Commissioner shall be responsible to the appropriate Minister or appropriate Ministers for reviewing, either generally or in respect of any particular matter, the performance of each chief executive.
- (1A) When reviewing the performance of a chief executive of a departmental agency, the Commissioner must consult the chief executive of the host department.
- (2) In carrying out its functions under subsection (1), the Commissioner shall report to the appropriate Minister or appropriate Ministers on the manner and extent to which the chief executive is fulfilling all of the requirements imposed upon that chief executive, whether under this Act or otherwise.

Section 43(1): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 43(1A): inserted, on 18 July 2013, by section 38 of the State Sector Amendment Act 2013 (2013 No 49).

Section 43(2): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **44 Special provisions in relation to certain chief executives**

- (1) Nothing in sections 35, 36, 38, 39, and 43 applies in respect of—
  - (a) *[Repealed]*
  - (b) *[Repealed]*
  - (c) *[Repealed]*

- (d) the Director of the Government Communications Security Bureau; or
  - (e) the State Services Commissioner.
- (1A) Nothing in sections 35, 36, 38, and 39 applies in respect of the Solicitor-General, and a review of the Solicitor-General's performance under section 43—
- (a) must only pertain to the Solicitor-General's responsibilities as the chief executive of a department; and
  - (b) must not pertain to the performance of the independent and constitutional functions of the Solicitor-General or the performance of persons assisting the Solicitor-General in the performance of those functions.
- (2) For the purposes of this Act, but subject to subsection (1),—
- (a) the Solicitor-General shall be the chief executive of the Crown Law Office:
  - (b) *[Repealed]*
  - (c) the State Services Commissioner shall be the chief executive in respect of the State Services Commission:
  - (d) *[Repealed]*
  - (e) the Director of the Government Communications Security Bureau is the chief executive of the Government Communications Security Bureau.

Section 44(1): amended, on 18 July 2013, by section 39(1)(a) of the State Sector Amendment Act 2013 (2013 No 49).

Section 44(1): amended, on 18 July 2013, by section 39(1)(b) of the State Sector Amendment Act 2013 (2013 No 49).

Section 44(1)(a): repealed, on 18 July 2013, by section 39(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 44(1)(b): repealed, on 18 July 2013, by section 39(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 44(1)(c): repealed, on 18 July 2013, by section 39(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 44(1)(d): substituted, on 2 April 2003, by section 33(1) of the Government Communications Security Bureau Act 2003 (2003 No 9).

Section 44(1)(e): added, on 2 April 2003, by section 33(1) of the Government Communications Security Bureau Act 2003 (2003 No 9).

Section 44(1A): inserted, on 18 July 2013, by section 39(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 44(2)(b): repealed, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

Section 44(2)(c): amended, on 19 December 1989, pursuant to section 33(2) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 44(2)(c): amended, on 19 December 1989, pursuant to section 33(3) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 44(2)(d): repealed, on 18 July 2013, by section 39(4) of the State Sector Amendment Act 2013 (2013 No 49).

Section 44(2)(e): added, on 2 April 2003, by section 33(2) of the Government Communications Security Bureau Act 2003 (2003 No 9).

**45 Application of Labour Relations Act 1987 in respect of chief executives**

*[Repealed]*

Section 45: repealed, on 15 May 1991, by section 3 of the State Sector Amendment Act 1991 (1991 No 31).

**Part 4****Senior leadership and management capability in Public Service**

Part 4: substituted, on 25 January 2005, by section 9 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

**46 Object**

The object of this Part is to specify the Commissioner's responsibilities for developing senior leadership and management capability in the Public Service.

Section 46: replaced, on 18 July 2013, by section 40 of the State Sector Amendment Act 2013 (2013 No 49).

**47 Responsibilities of Commissioner**

- (1) The Commissioner is responsible for developing and implementing a strategy for the development of senior leadership and management capability in the Public Service, which could include, for example, the flexible deployment of individuals to developmental roles in the Public Service (with the agreement of the individuals and the relevant chief executives).
- (2) The Commissioner may promote the strategy to other agencies in the State services, and may invite employees in the State services to participate in initiatives under the strategy (with the agreement of the relevant chief executives).

Section 47: replaced, on 18 July 2013, by section 40 of the State Sector Amendment Act 2013 (2013 No 49).

**48 Responsibilities of chief executives**

Each chief executive of a department or departmental agency is responsible for—

- (a) developing senior leadership and management capability in the department or departmental agency; and
- (b) assisting the Commissioner to fulfil the Commissioner's responsibilities under section 47.

Section 48: replaced, on 18 July 2013, by section 40 of the State Sector Amendment Act 2013 (2013 No 49).

**49 Secondments**

- (1) The Commissioner may arrange for a State services employee to be seconded elsewhere in the State services (with the agreement of the employee and the relevant chief executives) for the purpose of developing senior leadership and management capability in the State services.

- (2) Sections 60, 61, and 65 do not apply to the secondment.

Section 49: substituted, on 25 January 2005, by section 9 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 49(1): replaced, on 18 July 2013, by section 41 of the State Sector Amendment Act 2013 (2013 No 49).

## **50 Key positions in Public Service**

- (1) After consulting the chief executive of a department or departmental agency, the Commissioner may designate a position in the department or departmental agency that meets the criteria in subsection (2) as a key position.

- (2) For the purposes of this section and section 33(2)(a), **key position** means a position in a department or departmental agency that, in the opinion of the Commissioner, is key—

- (a) because of its potential to develop senior leaders; or
- (b) because it is critical to the Public Service.

- (3) The Commissioner must publish a list of key positions on an Internet site maintained by or on behalf of the Commissioner.

- (4) A chief executive may only appoint an employee to a key position with the Commissioner's agreement.

Section 50: replaced, on 18 July 2013, by section 42 of the State Sector Amendment Act 2013 (2013 No 49).

## **51 Appointments to positions in the senior executive service**

*[Repealed]*

Section 51: repealed, on 25 January 2005, by section 9 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **52 Conditions of employment for senior executive service**

*[Repealed]*

Section 52: repealed, on 25 January 2005, by section 9 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **53 Removal from office**

*[Repealed]*

Section 53: repealed, on 25 January 2005, by section 9 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **54 Conditions where person not reappointed**

*[Repealed]*

Section 54: repealed, on 25 January 2005, by section 9 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

**55 Training for senior executive service**

*[Repealed]*

Section 55: repealed, on 25 January 2005, by section 9 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

**Part 5****Government workforce policy and personnel provisions**

Part 5 heading: replaced, on 18 July 2013, by section 43 of the State Sector Amendment Act 2013 (2013 No 49).

**Subpart 1—Government workforce policy**

Subpart 1: inserted, on 18 July 2013, by section 44 of the State Sector Amendment Act 2013 (2013 No 49).

**55A Commissioner's functions in relation to this subpart**

The Commissioner has the following functions in relation to this subpart:

- (a) to provide advice and guidance to the State services (except Crown Research Institutes and their subsidiaries) on workforce matters; and
- (b) to consider whether to draft and submit draft government workforce policy for ministerial approval as a Government Workforce Policy Statement; and
- (c) to advise affected agencies on the operation of any Government Workforce Policy Statement; and
- (d) to facilitate the operation of any Government Workforce Policy Statement in conjunction with affected agencies.

Section 55A: inserted, on 18 July 2013, by section 44 of the State Sector Amendment Act 2013 (2013 No 49).

**55B Government workforce policy**

- (1) The Commissioner may draft government workforce policy and, after consulting the affected agencies and any other parties that the Commissioner considers appropriate, submit it to the Minister for his or her consideration.
- (2) Government workforce policy must relate to workforce (including employment and workplace) matters for the purpose of fostering a consistent, efficient, and effective approach to such matters across the State sector.
- (3) Workforce matters may, without limitation, address (in relation to the affected agency or agencies)—
  - (a) the Government's expectations about the negotiation of collective agreements and individual employment agreements in the State services (being expectations that do not determine pay or conditions); and
  - (b) the development of workforce strategy.



- (4) Government workforce policy must specify the agency or agencies to which it applies, which may be any or all of the following:
  - (a) a department or departments;
  - (b) a Crown agent or Crown agents;
  - (c) an autonomous Crown entity or autonomous Crown entities.
- (5) The Minister may approve government workforce policy as a Government Workforce Policy Statement.
- (6) A Government Workforce Policy Statement is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Section 55B: inserted, on 18 July 2013, by section 44 of the State Sector Amendment Act 2013 (2013 No 49).

Section 55B(6): replaced, on 5 August 2013, by section 65 of the State Sector Amendment Act 2013 (2013 No 49).

#### **55C Government Workforce Policy Statement: process**

- (1) As soon as practicable after the Minister's approval under section 55B(5), the Commissioner must—
  - (a) send the Government Workforce Policy Statement to the affected agencies; and
  - (b) publish the Government Workforce Policy Statement on an Internet site maintained by, or on behalf of, the Commissioner.
- (2) A Government Workforce Policy Statement may be amended, revoked, or replaced in the same way as it may be made.

Section 55C: inserted, on 18 July 2013, by section 44 of the State Sector Amendment Act 2013 (2013 No 49).

#### **55D Government Workforce Policy Statement: implementation**

- (1) A department must give effect to a Government Workforce Policy Statement.
- (2) A Crown agent must give effect to a Government Workforce Policy Statement.
- (3) An autonomous Crown entity must have regard to a Government Workforce Policy Statement.
- (4) Despite subsections (1) to (3), a Government Workforce Policy Statement may not—
  - (a) create, alter, or remove employment or other legal rights or obligations; or
  - (b) determine or alter the content of the law applying to employees or chief executives or the Commissioner.

Section 55D: inserted, on 18 July 2013, by section 44 of the State Sector Amendment Act 2013 (2013 No 49).

## Subpart 2—Personnel provisions

Subpart 2 heading: inserted, on 18 July 2013, by section 44 of the State Sector Amendment Act 2013 (2013 No 49).

### 56 General principles

- (1) The chief executive of a department must—
  - (a) operate a personnel policy that complies with the principle of being a good employer; and
  - (b) make that policy (including the equal employment opportunities programme) available to its employees; and
  - (c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.
- (2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
  - (a) good and safe working conditions; and
  - (b) an equal employment opportunities programme; and
  - (c) the impartial selection of suitably qualified persons for appointment (except in the case of ministerial staff); and
  - (d) recognition of—
    - (i) the aims and aspirations of the Maori people; and
    - (ii) the employment requirements of the Maori people; and
    - (iii) the need for greater involvement of the Maori people in the Public Service; and
  - (e) opportunities for the enhancement of the abilities of individual employees; and
  - (f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and
  - (g) recognition of the employment requirements of women; and
  - (h) recognition of the employment requirements of persons with disabilities.
- (3) In addition to the requirements, specified in subsections (1) and (2), each chief executive shall ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest.

(4) *[Repealed]*

Section 56(1): substituted, on 25 January 2005, by section 10(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 56(2)(c): amended, on 18 July 2013, by section 45 of the State Sector Amendment Act 2013 (2013 No 49).

Section 56(2)(f): substituted, on 25 January 2005, by section 10(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 56(4): repealed, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **57 Commissioner may set minimum standards of integrity and conduct**

- (1) The Commissioner may set minimum standards of integrity and conduct that are to apply in—
  - (a) the Public Service;
  - (b) all or any Crown entities (except for tertiary education institutions and Crown Research Institutes and any of their subsidiaries);
  - (ba) companies named in Schedule 4A of the Public Finance Act 1989;
  - (c) the Parliamentary Counsel Office;
  - (d) the Parliamentary Service.
- (2) The Commissioner may set those minimum standards by issuing a code of conduct and applying it to any agency referred to in subsection (1), by written notice to the agency.
- (3) The Commissioner may apply a code to any agency or agencies referred to in subsection (1), or to any particular persons or groups of persons undertaking particular functions in such an agency or agencies, with any variations that the Commissioner thinks appropriate in light of the legal, commercial, or operational context of the agency or agencies or of the persons or groups of persons.
- (4) The Commissioner's functions include providing advice and guidance to the State services (except Crown Research Institutes and their subsidiaries) on matters, or at times, that affect the integrity and conduct of those within the State services (including, for example, on the interpretation of relevant standards and on the application of a code of conduct in specific cases).

Compare: 1988 No 20 ss 6(ha), 57C(2)

Section 57: substituted, on 25 January 2005, by section 11 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 57(1)(b): amended, on 18 July 2013, by section 46(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 57(1)(ba): inserted, on 18 July 2013, by section 46(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 57(3): replaced, on 18 July 2013, by section 46(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 57(4): inserted, on 18 July 2013, by section 46(3) of the State Sector Amendment Act 2013 (2013 No 49).

Section 57 compare note: inserted, on 18 July 2013, by section 46(4) of the State Sector Amendment Act 2013 (2013 No 49).

**57A Agencies must comply with minimum standards except in particular circumstances**

- (1) An agency (including its employees and individuals working as contractors or secondees in relation to a function, duty, or power of the agency) must comply with any standards that apply to it under section 57.
- (2) However, an agency referred to in section 57(1)(b) to (d) may derogate from a particular standard if the agency has—
  - (a) obtained the prior written approval of its responsible Minister to the derogation; and
  - (b) sent a copy of the approval to the Commissioner.
- (3) This section does not prevent an agency from applying additional or detailed standards that are consistent with the standards applied to the agency.

Section 57A: inserted, on 25 January 2005, by section 11 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 57A(1): amended, on 18 July 2013, by section 47 of the State Sector Amendment Act 2013 (2013 No 49).

**57B Breaches of minimum standards**

The Commissioner may advise the responsible Minister if, in the opinion of the Commissioner, a serious breach of any minimum standard applied to an agency under section 57 has occurred, or is likely to occur.

Section 57B: inserted, on 25 January 2005, by section 11 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

**57C Commissioner's powers when setting and enforcing minimum standards**

- (1) The Commissioner may, when acting under sections 57 to 57B in respect of any agency referred to in section 57(1)(b) to (d), exercise the powers in sections 7 to 9 that the Commissioner may exercise in respect of departments, including the powers in section 25.
- (2) *[Repealed]*

Section 57C: inserted, on 25 January 2005, by section 11 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 57C(2): repealed, on 18 July 2013, by section 48 of the State Sector Amendment Act 2013 (2013 No 49).

**58 Equal employment opportunities**

- (1) The Commissioner's functions include promoting, developing, and monitoring equal employment opportunities programmes and policies for the Public Service.
- (2) *[Repealed]*
- (3) For the purposes of this section and section 56, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers.

ers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons.

Compare: 1988 No 20 s 6(g)

Section 58(1): replaced, on 18 July 2013, by section 49(1) of the State Sector Amendment Act 2013 (2013 No 49).

Section 58(2): repealed, on 25 January 2005, by section 12(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 58(3): amended, on 18 July 2013, by section 49(2) of the State Sector Amendment Act 2013 (2013 No 49).

Section 58(3): amended, on 25 January 2005, by section 12(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 58 compare note: inserted, on 18 July 2013, by section 49(3) of the State Sector Amendment Act 2013 (2013 No 49).

## **59 Employees of departments**

- (1) In relation to the functions, duties, and powers of a department, the chief executive of the department—
  - (a) may appoint such employees of the department (including acting, temporary, or casual employees) as the chief executive thinks necessary; and
  - (b) may, subject to any conditions of employment included in the employment agreement applying to an employee, at any time remove that employee from his or her office or employment; and
  - (c) has, except as expressly provided to the contrary in this Act, the rights, powers, and duties of an employer in respect of the employees of the department.
- (2) In relation to employees of a host department who perform the functions or duties or exercise the powers of a departmental agency, the chief executive of the host department is deemed by this subsection—
  - (a) to have delegated to the chief executive of the departmental agency the following rights, duties, and powers:
    - (i) those described in subsection (1)(a), (b), and (c) and section 69(a) and (c); and
    - (ii) those described in sections 60 to 64; and
    - (iii) those described in sections 82 and 83; and
  - (b) not to have those rights, duties, and powers in relation to those employees.
- (3) The chief executive of a departmental agency may exercise the rights, duties, and powers deemed to have been delegated to him or her under subsection (2) in the same manner, subject to the same restrictions, and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.

- (4) Appointments under subsection (1)(a) or (2)(a)(i) (except of ministerial staff) are provisional pending the outcome of any review under section 65.
- (5) The chief executive of the department that is responsible for the employment of ministerial staff across all Ministers' offices must have regard to the wishes of the relevant Minister in relation to ministerial staff.

Section 59: replaced, on 18 July 2013, by section 50 of the State Sector Amendment Act 2013 (2013 No 49).

#### **60 Appointments on merit**

A chief executive, in making an appointment under this Act, shall give preference to the person who is best suited to the position.

#### **61 Obligation to notify vacancies**

Where a chief executive of a department intends to fill a position that is vacant or is to become vacant in the department, the chief executive shall, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

#### **61A Restriction of redundancy payments in certain situations**

- (1) A Public Service employee who has received a notice of redundancy is not entitled to a redundancy payment if, before the employee's employment has ended, the employee either—
  - (a) is offered and accepts another position in the State services (either in the employee's current department or elsewhere in the State services) that—
    - (i) begins before, on, or immediately after the date on which the employee's current employment ends; and
    - (ii) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and
    - (iii) is on terms that treat service within the State services as if it were continuous service; or
  - (b) is offered an **alternative position** in the State services (either in the employee's current department or elsewhere in the State services) that—
    - (i) begins before, on, or immediately after the date on which the employee's current employment ends; and
    - (ii) is a position with comparable duties and responsibilities to those of the employee's current position; and
    - (iii) is in substantially the same general locality or a locality within reasonable commuting distance; and
    - (iv) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and

- (v) is on terms that treat service within the State services as if it were continuous service.
- (2) Sections 60, 61, and 65 do not apply in relation to the offer of an alternative position.
- (3) This section overrides Part 6A of the Employment Relations Act 2000.  
Compare: 1988 No 20 ss 30E, 30F, 61A, 61B(1)  
Section 61A: replaced, on 18 July 2013, by section 51 of the State Sector Amendment Act 2013 (2013 No 49).

**61AB Transitional provision relating to restriction of redundancy payments**

- (1) The new redundancy-related sections do not apply until the expiry of 3 years after the commencement of this section.
- (2) The old redundancy-related sections continue to apply until immediately before the expiry of 3 years after the commencement of this section.
- (3) For the purposes of this section,—  
**new redundancy-related sections** means sections 61A and 61B after their amendment by the State Sector Amendment Act 2013  
**old redundancy-related sections** means sections 30C, 30D, 30E, 30F, 61A, and 61B as they were in force immediately before their repeal by the State Sector Amendment Act 2013.  
Section 61AB: inserted, on 18 July 2013, by section 51 of the State Sector Amendment Act 2013 (2013 No 49).

**61B Application of employee provisions to transfers of functions between Crown entities and departments**

- (1) The following provisions apply both to a transfer of functions from a Crown entity to a department and to a transfer of functions from a department to a Crown entity:
  - (a) sections 61A and 61C:
  - (b) sections 30H, 30I, and 61D in so far as—
    - (i) those sections relate to a collective employment agreement that binds the chief executive of the Crown entity or department before the transfer of the functions; and
    - (ii) that collective employment agreement applies to an employee whose position in the Crown entity or department ceases to exist as a result of the transfer of functions.
- (2) The sections referred to in subsection (1) apply in respect of the Crown entity or department that functions are transferred from—
  - (a) as if any reference to Department A in those sections were a reference to that Crown entity or department; and

- (b) with all other necessary modifications.

Compare: 1988 No 20 s 30D

Section 61B: replaced, on 18 July 2013, by section 51 of the State Sector Amendment Act 2013 (2013 No 49).

### **61C Union coverage where department ceases to be part of Public Service**

When any department or part of any department ceases (other than as a result of its disestablishment) to be part of the Public Service, the union coverage arrangements that prevailed immediately before the date on which the department or the part of the department ceased to be part of the Public Service shall continue to apply to the employees of the department, or that part of it, for a period (not exceeding 12 months) to be agreed between—

- (a) the union or unions that had coverage of the employees while that department was part of the Public Service; and
- (b) the Minister of State Services.

Section 61C: inserted, on 19 December 1989, by section 14 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 61C: amended, on 18 July 2013, by section 52 of the State Sector Amendment Act 2013 (2013 No 49).

### **61D Application of collective agreements to employees following reorganisations**

- (1) This section limits which employees may be bound by a collective agreement that—
- (a) binds the chief executive of Department A before a transfer of functions from Department A to Department B and that, as a consequence of sections 30H and 30I, binds the chief executive of Department B after that transfer of functions (**collective agreement A**); or
- (b) binds the chief executive of Department B before that transfer of functions (**collective agreement B**).
- (2) After that transfer of functions,—
- (a) the only employees of Department B who are entitled to be bound by or enforce collective agreement A are those employees who are appointed to a position in Department B that has been established (whether or not previously existing in Department A) to enable Department B to perform the transferred functions; and
- (b) the only employees of Department B who are entitled to be bound by or enforce collective agreement B are those employees who hold, or are appointed to, a position other than a position referred to in paragraph (a).
- (3) Subsection (2) does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee



would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.

- (4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements, under Part 6 of this Act and sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000.
- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

Compare: 1988 No 20 s 30G

Section 61D: inserted, on 18 July 2013, by section 53 of the State Sector Amendment Act 2013 (2013 No 49).

## **62 Acting appointments**

- (1) In the case of absence from duty of any employee (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in a department (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the chief executive to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.
- (2) No such direction and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee has not been appointed to any position to which the direction relates.

Compare: 1962 No 132 s 33

## **63 Evidence of appointments**

- (1) Any appointment to any office or position in a department shall be made, confirmed, or approved in writing by an instrument or minute by the chief executive or by any person to whom the chief executive has delegated power in that behalf in accordance with section 41; and, notwithstanding anything to the contrary in any Act, it shall not be necessary for the chief executive or any such person to execute any formal warrant or other instrument in special form.
- (2) A certificate signed by the chief executive that any person named in the certificate was appointed to any office or position in the department from and including a day stated therein shall be sufficient evidence that the person so named was duly so appointed to and continues to hold the office or position unless the contrary is proved.

Compare: 1962 No 132 s 34

**64 Obligation to notify appointments**

The chief executive of a department shall notify to the employees within the department every appointment (other than that of an acting, temporary, or casual employee) made by the chief executive to an office or position in the department.

**65 Review of appointments**

- (1) The chief executive of each department shall put into place for the department a procedure for reviewing those appointments made within that department that are the subject of any complaint by an employee of that department.
- (2) The procedure shall be approved by the Commissioner and shall comply with the guidelines prescribed by the Commissioner for such review procedures.
- (3) Nothing in this section relates to an acting appointment.

Section 65(2): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 65(3): amended, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

**66 Certain sections do not apply in relation to ministerial staff**

Sections 60, 61, 64, and 65 do not apply in relation to ministerial staff.

Section 66: replaced, on 18 July 2013, by section 54 of the State Sector Amendment Act 2013 (2013 No 49).

**Part 6****Application of Employment Relations Act 2000**

Part 6: substituted, on 15 May 1991, by section 7 of the State Sector Amendment Act 1991 (1991 No 31).

Part 6 heading: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

**67 Application to Public Service of Employment Relations Act 2000**

Except as otherwise provided in this Act, the Employment Relations Act 2000 applies in relation to the Public Service.

Section 67: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

**68 Negotiation of conditions of employment**

- (1) The Commissioner is responsible for negotiating under the Employment Relations Act 2000 every collective agreement applicable to employees of any department of the Public Service as if the Commissioner were the employer.
- (2) Without limiting subsection (1), it is declared that, for the purposes of initiating bargaining for a collective agreement, good faith bargaining for a collective agreement, and entering into collective agreements,—

- (a) the Commissioner has the same rights, duties, and obligations under the Employment Relations Act 2000 as the Commissioner would have if the Commissioner were the employer; and
  - (b) employees of each department affected are to be treated as if they were all employees of the Commissioner.
- (3) The Commissioner must conduct the negotiations—
- (a) with a union of which the employees are members; and
  - (b) in consultation with the chief executive of each department affected.
- (4) Every collective agreement must be entered into between—
- (a) the Commissioner; and
  - (b) a union of which the employees to whom the collective agreement is applicable are members.
- (5) Every collective agreement entered into between the Commissioner and a union and relating to employees of a department is binding on—
- (a) the chief executive of that department; and
  - (b) the employees of that department who are or become members of the union and whose work comes within the coverage clause in the collective agreement.
- (6) Except as provided in this section, an employer who is bound by a collective agreement under subsection (5) has the rights, obligations, and duties that that employer would have, in respect of that collective agreement, under the Employment Relations Act 2000 as if that employer were a party to that agreement.

Section 68: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

## **69 Personal grievances and disputes**

Despite the provisions of section 68,—

- (a) in relation to a personal grievance, the employer is the chief executive of the department; and
- (b) in relation to a dispute about the interpretation, application, or operation of any collective agreement, the employer is the chief executive of the department acting, if the Commissioner so requires, together with or in consultation with the Commissioner; and
- (c) in relation to any other employment relationship problem (within the meaning of the Employment Relations Act 2000), the employer is the chief executive of the department.

Section 69: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

**70 Delegation of Commissioner's powers**

- (1) The Commissioner may from time to time delegate, in writing, to a chief executive of a department any of the Commissioner's powers under section 68.
- (2) Where the Commissioner, acting under subsection (1), delegates to a chief executive the function, under section 68(1), of conducting negotiations with a union of which the employees are members, the chief executive must conduct those negotiations in consultation with the Commissioner.
- (3) Nothing in this section limits the provisions of section 23.

Section 70: substituted, on 15 May 1991, by section 7 of the State Sector Amendment Act 1991 (1991 No 31).

Section 70(2): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

**71 Compulsory arbitration and agreement not to strike or lock out**

*[Repealed]*

Section 71: repealed, on 15 May 1991, by section 7 of the State Sector Amendment Act 1991 (1991 No 31).

**72 Contravention of agreement not to strike or lock out**

*[Repealed]*

Section 72: repealed, on 15 May 1991, by section 7 of the State Sector Amendment Act 1991 (1991 No 31).

## **Part 7 Education service**

Part 7: substituted, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

**73 Application of Employment Relations Act 2000**

Except as otherwise provided in this Act, the Employment Relations Act 2000 applies in relation to the education service.

Section 73: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

**74 Negotiation of conditions of employment**

- (1) Except as provided in section 74C, the Commissioner is responsible for negotiating under the Employment Relations Act 2000 every collective agreement applicable to employees of the education service as if the Commissioner were the employer.
- (2) Without limiting subsection (1), it is declared that, for the purposes of initiating bargaining for a collective agreement, good faith bargaining for a collective agreement, and entering into collective agreements,—

- (a) the Commissioner has the same rights, duties, and obligations under the Employment Relations Act 2000 as the Commissioner would have if the Commissioner were the employer; and
  - (b) employees of the education service are to be treated as if they were all employees of the Commissioner.
- (3) Unless otherwise directed in writing by the Commissioner, an employer in the education service must not lock out employees or suspend striking employees in relation to negotiations by the Commissioner for a collective agreement applicable to those employees.
- (4) The Commissioner must conduct the negotiations—
- (a) with a union of which the employees are members; and
  - (b) in consultation with—
    - (i) the chief executive of the Ministry of Education; and
    - (ii) representatives of the employer or employers who will be bound by the collective agreement, which representatives must be employers or organisations of employers, of persons employed in the education service.
- (5) Every collective agreement must be entered into between—
- (a) the Commissioner; and
  - (b) a union of which the employees to whom the collective agreement is applicable are members.
- (6) Every collective agreement entered into between the Commissioner and any union and relating to employees in the education service is binding on—
- (a) the employers of the employees to whom the collective agreement is applicable; and
  - (b) the employees in the education service who are, or who become, members of the union.
- (7) Except as provided in this section, an employer who is bound by a collective agreement under subsection (6) has the rights, obligations, and duties that that employer would have, in respect of that collective agreement, under the Employment Relations Act 2000 as if that employer were a party to that agreement.

Section 74: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

#### **74AA Commissioner's powers when collective agreements are negotiated**

- (1) During the negotiations for a collective agreement that is to bind any employees of a Board of Trustees, the Commissioner has, for the purpose of those negotiations, all the rights, duties, and powers of an employer under the Employment Relations Act 2000 in respect of those employees.

- (2) To avoid doubt and without limiting the generality of subsection (1), it is declared that the powers referred to in that subsection include the power to lock out or suspend employees.
- (3) Despite subsection (1), in the case of employees who are members of a union, the Commissioner may, where there is a strike, exercise the power of suspension by advising the union of the class or classes of employees who are, or are to be, suspended, and, if the union is so advised, the suspension takes effect on the date specified for the purpose in the advice, and the Commissioner need not—
  - (a) separately advise any employee who is included in any such class; or
  - (b) comply with section 89 of the Employment Relations Act 2000.
- (4) In any case where the Commissioner has suspended or locked out an employee by virtue of this section, the Commissioner may, at his or her discretion, give either or both of the following directions:
  - (a) that the employee is not to be remunerated in respect of the period of the suspension or lockout;
  - (b) that any amount paid to the employee in respect of that period be deducted from any remuneration otherwise payable to the employee.
- (5) Any direction under subsection (4)—
  - (a) may be given to any person responsible for effecting payments or transfers of sums of money required for the remuneration of the employee; and
  - (b) must be followed by the person.
- (6) The Commissioner may give any notice that, as a result of a direction under subsection (4)(b), is required to be given to an employee under section 6(3)(b) of the Wages Protection Act 1983.
- (7) Subsection (1)—
  - (a) overrides section 77E(2); and
  - (b) is subject to sections 74AC and 74AD.
- (8) In this section and in sections 74AB to 74AD, **Board of Trustees** means a Board of Trustees constituted under Part 9 of the Education Act 1989, and includes any Commissioner appointed under that Act to act in place of the Board of Trustees.

Section 74AA: inserted, on 6 April 2004, by section 4 of the State Sector Amendment Act 2004 (2004 No 15).

#### **74AB Boards of Trustees indemnified by Commissioner**

- (1) If, in any claim or proceedings, a Board of Trustees becomes liable for costs or damages that arise from the exercise or purported exercise of any of the powers conferred on the Commissioner by section 74AA, the Commissioner must, out

of money appropriated for the purpose by Parliament, indemnify the Board for those costs or damages.

- (2) However, a Board of Trustees may not be indemnified for any costs or damages to the extent that those costs or damages arise out of conduct of the Board that, in the reasonable opinion of the Commissioner,—
  - (a) is not in good faith; or
  - (b) is engaged in without reasonable care.

Section 74AB: inserted, on 6 April 2004, by section 4 of the State Sector Amendment Act 2004 (2004 No 15).

#### **74AC Strikes in schools to be notified**

- (1) A strike by employees of any Board of Trustees is not lawful for the purposes of the Employment Relations Act 2000 unless the Commissioner and each Board of Trustees is given notice in written or electronic form of the proposed strike 3 days before the commencement of the proposed strike.
- (2) The notice required by subsection (1) must state—
  - (a) the nature of the proposed strike, including whether or not the proposed action will be continuous; and
  - (b) the school or schools that will be affected by the proposed strike; and
  - (c) the period of the proposed strike, which is to be specified by giving—
    - (i) the date and time on which the proposed strike is to commence; and
    - (ii) the date and time on which, or an event on the occurrence of which, the proposed strike is to end.
- (3) The notice must be signed by a representative of the employees' union.
- (4) Unless the notice is withdrawn before the commencement of the strike, every employee is, throughout the period stated in the notice, deemed to participate in the strike if—
  - (a) the employee's duties are normally performed in a school affected by the strike; and
  - (b) the strike relates to the negotiation of a collective agreement that will bind the employee; and
  - (c) the employee's name has not been notified to the Commissioner in a current notice given under section 74AD.
- (4A) A notice required under subsection (1) may be withdrawn at any time by a representative of the employees' union giving written or electronic notice of the withdrawal to the Commissioner and each Board of Trustees.
- (5) The provisions of this section are in addition to, and not in derogation of, the provisions of the Employment Relations Act 2000.

Section 74AC: inserted, on 6 April 2004, by section 4 of the State Sector Amendment Act 2004 (2004 No 15).

Section 74AC(2)(c): replaced, on 6 March 2015, by section 78 of the Employment Relations Amendment Act 2014 (2014 No 61).

Section 74AC(4A): inserted, on 6 March 2015, by section 78 of the Employment Relations Amendment Act 2014 (2014 No 61).

#### **74AD Employers to notify Commissioner about participation in strikes**

- (1) As soon as reasonably practicable after the commencement of a strike notified under section 74AC, the Board of Trustees of each school to which the notice relates must—
  - (a) provide the Commissioner with a list of the names of the employees of the Board who are not participating in the strike notified by the notice; and
  - (b) notify each of those employees that he or she has been included in the list.
- (2) A Board of Trustees that has complied, or is to comply, with subsection (1) must, at the written direction of the Commissioner, provide the Commissioner with any information required by the Commissioner about the conduct of the strike to which the notice under section 74AC relates.
- (3) Information under subsection (2) may, without limitation, include, or consist of, information about the number of hours worked by any employee or any class of employee.
- (4) The Commissioner may, at the Commissioner's discretion, require a Board of Trustees to inform the Commissioner, by a specified date, as to the Board of Trustees' compliance with the provisions of, or any directions given under, this section.
- (5) If the Commissioner has reasonable grounds for believing that a Board of Trustees has failed to comply with the provisions of, or any directions given under, this section, the Commissioner may report those grounds to the Minister of the Crown who is for the time being responsible for the administration of Part 8A of the Education Act 1989.

Section 74AD: inserted, on 6 April 2004, by section 4 of the State Sector Amendment Act 2004 (2004 No 15).

#### **74A Personal grievances and disputes**

Despite the provisions of section 74,—

- (a) in relation to a personal grievance, the employer is the employer as defined in section 2; and
- (b) in relation to a dispute about the interpretation, application, or operation of any collective agreement, the employer is the employer as defined in section 2, acting, if the Commissioner so requires, together or in consultation with the Commissioner; and



- (c) in relation to any other employment relationship problem (within the meaning of the Employment Relations Act 2000), the employer is the employer as defined in section 2.

Section 74A: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

#### **74B Delegation of Commissioner's powers**

- (1) The Commissioner may from time to time delegate, in writing, to—
  - (a) an employer; or
  - (b) any organisation of employers of persons employed in the education service—

any of the Commissioner's powers under section 74.

- (2) Where the Commissioner, acting under subsection (1), delegates to an employer or an organisation of employers the function, under section 74(1), of conducting negotiations with a union of which the employees are members, the employer or organisation of employers must conduct those negotiations in consultation with—
  - (a) the Commissioner; and
  - (b) the chief executive of the Ministry of Education.

- (3) Nothing in this section limits the provisions of section 23.

Section 74B: substituted, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

Section 74B(2): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

#### **74C Negotiation of conditions of employment for employees of tertiary education institutions**

- (1) For the period beginning with the commencement of this section and ending with the close of 31 December 1991, the Commissioner shall be responsible for negotiating under the Employment Contracts Act 1991 collective employment contracts that cover or that are proposed to cover any group of employees in any tertiary education institution. The negotiations conducted by the Commissioner under this subsection shall be conducted in consultation with the representatives of the employer or employers who will be bound by the proposed collective employment contracts, which representatives shall be employers, or organisations of employers, of persons employed in a tertiary education institution.
- (2) On and after 1 January 1992, the chief executive of each tertiary education institution shall be responsible either—
  - (a) individually; or
  - (b) jointly through any organisation of employers of persons employed in any tertiary education institution—

for negotiating under the Employment Relations Act 2000 collective agreements that are applicable to any group of employees in any tertiary education institution.

- (3) Before entering into any collective agreement under the Employment Relations Act 2000, the chief executive of each tertiary education institution or any organisation of employers representing jointly such chief executives, must consult with the State Services Commissioner over the conditions of employment to be included in the collective agreement.

Section 74C: inserted, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

Section 74C heading: amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 74C(1): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 74C(2): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 74C(2): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 74C(2)(b): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 74C(3): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 74C(3): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

#### **74D Senior positions at tertiary education institutions**

- (1) The conditions of employment of every person appointed to a senior position at a tertiary education institution who is not bound by any collective employment agreement shall be determined in each case by agreement between the employer and the person to be appointed but the employer shall consult with the State Services Commissioner before finalising the conditions of employment.
- (2) For the purposes of subsection (1), a **senior position** means the position or positions immediately below, in seniority, the position of the chief executive of the tertiary education institution, and such other positions as the Council of the institution may from time to time designate as being senior positions within the institution.

Section 74D: inserted, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

Section 74D heading: amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 74D(1): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 74D(1): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 74D(2): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **75 Actual conditions of employment**

- (1) The Commissioner may declare that all or any part of the conditions of employment fixed under a collective agreement for persons employed in the education service (other than at any tertiary education institution) are to be the actual conditions of employment.
- (2) The conditions of employment of employees in the education service (other than employees at any tertiary education institution) who are not bound by any collective agreement shall be determined in each case by agreement between the employer and the individual employee, but the employer shall obtain the written concurrence of the Commissioner to the conditions of employment with that individual employee.
- (3) The Commissioner, in carrying out the function under subsection (2), may promulgate in writing to employers, either generally or specifically, the conditions of employment for persons who are to have their conditions of employment determined in accordance with that subsection. Where the conditions of employment agreed between the employer and the person to be appointed comply with the conditions of employment promulgated by the Commissioner, the employer shall, without any further action, be deemed to have obtained the written concurrence of the Commissioner to those conditions of employment.

Section 75: substituted, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

Section 75(1): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 75(1): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 75(2): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 75(2): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

## **76 Offence to attempt to influence employer**

- (1) Every person commits an offence against this section who directly or indirectly solicits or endeavours to influence, with respect to decisions on the matters described in section 77F, any employer or any other person or persons to whom the employer has, under this Act or any other Act, delegated powers.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.
- (3) Nothing in this section shall apply to any person giving information or advice or making representations to the employer or to any other person or persons acting under delegation from the employer in respect of any matter at the request or invitation of the employer or to any other person or persons acting under delegation.

- (4) Nothing in this section is to be construed so as to prevent any union from making representations to the employer or to any other person or persons acting under delegation from the employer on any matter affecting the salaries, wages, or conditions of employment of any employees who are members of that union.

Section 76: substituted, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

Section 76(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 76(4): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

### **77 Immunity for education service chief executives and employees**

Education service chief executives and employees are immune from liability in civil proceedings for good-faith actions or omissions in pursuance or intended pursuance of their duties, functions, or powers.

Section 77: replaced, on 18 July 2013, by section 55 of the State Sector Amendment Act 2013 (2013 No 49).

### **77AA Offence to attempt to influence employer**

*[Repealed]*

Section 77AA: repealed, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

### **77AB Protection from liability**

*[Repealed]*

Section 77AB: repealed, on 15 May 1991, by section 9 of the State Sector Amendment Act 1991 (1991 No 31).

## **Part 7A**

### **Personnel provisions in relation to education service**

Part 7A: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

### **77A General principles**

- (1) Every employer in the education service must—
- (a) operate a personnel policy that complies with the principle of being a good employer; and
  - (b) make that policy (including the equal employment opportunities programme) available to its employees; and
  - (c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report (if any) on the extent of its compliance.
- (2) For the purposes of this section a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for

- the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
  - (b) an equal employment opportunities programme; and
  - (c) the impartial selection of suitably qualified persons for appointment; and
  - (d) recognition of—
    - (i) the aims and aspirations of the Maori people; and
    - (ii) the employment requirements of the Maori people; and
    - (iii) the need for greater involvement of the Maori people in the education service; and
  - (e) opportunities for the enhancement of the abilities of individual employees; and
  - (f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and
  - (g) recognition of the employment requirements of women; and
  - (h) recognition of the employment requirements of persons with disabilities.
- (3) In addition to the requirements specified in subsections (1) and (2), each employer shall ensure that all employees maintain proper standards of integrity, conduct, and concern for—
- (a) the public interest; and
  - (b) the well-being of students attending the institution.

Section 77A: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

Section 77A(1): substituted, on 25 January 2005, by section 13(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77A(2)(f): substituted, on 25 January 2005, by section 13(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

### **77B Code of conduct**

- (1) The chief executive of the Ministry of Education may from time to time issue a code of conduct covering the minimum standards of integrity and conduct that are to apply in the education service.
- (2) The chief executive of the Ministry may issue separate codes of conduct under this section to apply to different parts of the education service.
- (3) Before the chief executive of the Ministry issues a code of conduct under this section, the chief executive of the Ministry shall consult with—
  - (a) representatives of the employers whose employees will be bound by the code of conduct, which representatives shall be employers, or organisations of employers, of persons employed in the education service; and

- (b) the organisations of employees employed in the education service that represent the employees who will be bound by the code of conduct; and
  - (c) the Commissioner, and must have regard to any code of conduct issued by the Commissioner under section 57.
- (4) Nothing in this section prevents the prescribing by an employer of standards of integrity or conduct that are to apply to that employer's employees (being standards which are not inconsistent with any code of conduct issued by the chief executive of the Ministry under this section and which apply in relation to employees of that employer).
- (5) Nothing in this section shall apply to any tertiary education institution.

Section 77B: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

Section 77B(3)(c): substituted, on 25 January 2005, by section 14 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77B(5): added, on 19 December 1989, by section 19 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 77B(5): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

### **77C Performance of teachers**

- (1) The chief executive of the Ministry of Education may from time to time prescribe matters that are to be taken into account by employers in assessing the performance of teachers.
- (2) Before the chief executive of the Ministry of Education prescribes any matters under subsection (1), the chief executive of the Ministry shall consult with—
- (a) the Education Council of Aotearoa New Zealand; and
  - (b) the chief executive of the Education Review Office; and
  - (c) representatives of employers of teachers; and
  - (d) the organisations of teachers that represent teachers who will be subject to the matters prescribed under this section.
- (3) Nothing in this section prevents the prescribing by an employer of matters to be taken into account in assessing the performance of teachers employed by that employer (being matters which are not inconsistent with any matters prescribed under this section by the chief executive of the Ministry and which apply to teachers employed by that employer).
- (4) Nothing in this section shall apply to any teachers employed in any tertiary education institution, or early childhood institution that is not a free kindergarten.

Section 77C: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

Section 77C(1): amended, on 18 July 2013, by section 56 of the State Sector Amendment Act 2013 (2013 No 49).

Section 77C(2)(a): amended, on 1 July 2015, by section 46(2) of the Education Amendment Act 2015 (2015 No 1).

Section 77C(4): added, on 19 December 1989, by section 20 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 77C(4): amended, on 17 May 2006, by section 58 of the Education Amendment Act 2006 (2006 No 19).

Section 77C(4): amended, on 25 January 2005, by section 17(c) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

### **77D Equal employment opportunities**

(1) The chief executive of the Ministry of Education shall be responsible for promoting, developing, and monitoring equal employment opportunities policies and programmes in the education service.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) For the purposes of this section and section 77A, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons.

Section 77D: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

Section 77D(2): repealed, on 25 January 2005, by section 15 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77D(3): repealed, on 25 January 2005, by section 15 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77D(4): repealed, on 25 January 2005, by section 15 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

### **77E Employees of institutions**

(1) Subject to the provisions of any Act relating to the registration of teachers, each employer—

(a) may from time to time appoint such employees (including acting or temporary or casual or relieving employees) as the employer thinks necessary for the efficient exercise of the functions, duties, and powers of the institution; and

(b) may, subject to any conditions of employment included in the employment agreement applying to the employee, at any time remove any employee from that employee's employment.

(2) Unless expressly provided to the contrary in this Act, the employer shall have all the rights, duties, and powers of an ordinary employer in respect of the persons employed in that institution.

Section 77E: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

Section 77E(1)(b): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

### **77F Duty to act independently**

In matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, disciplining, or the cessation of the employment of any employee, or other matters), the employer shall act independently.

Section 77F: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

### **77G Appointments on merit**

An employer in making an appointment under this Act shall give preference to the person who is best suited to the position.

Section 77G: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

### **77H Obligation to notify vacancies**

Where an employer intends to fill a position that is vacant or is to become vacant in the institution (other than with an acting or temporary or casual or relieving employee), the employer shall, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

Section 77H: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

Section 77H: amended, on 19 December 1989, by section 21 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

### **77HA Restriction of compensation for technical redundancy arising from closure or merger of schools**

- (1) An employee in a school is not entitled to receive any payment or other benefit on the ground that his or her position in the school (the **previous position**) has ceased to exist because the school is affected by a merger under section 156A of the Education Act 1989 or is closed under section 154 of that Act and, before the date on which the merger or the closure takes effect,—
  - (a) the employee is offered in writing employment in an equivalent position (whether or not the employee accepts the offer) in the continuing school or in the replacement school or in another school directly affected by the merger or the closure; or
  - (b) the employee is offered in writing, and accepts, employment in any other position in the continuing school or in the replacement school or in another school directly affected by the merger or the closure.



- (2) Employment in an equivalent position in relation to the employee's previous position is employment that—
  - (a) is generally similar in role, duties, and status; and
  - (b) requires similar qualifications, training, skills, and experience, but may have a different title; and
  - (c) is in the same general locality; and
  - (d) is on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of employment (including any service-related redundancy conditions and superannuation conditions); and
  - (e) is on terms that treat the period of service with the school in which the previous position was held (and any other period of service recognised for the purposes of the previous position as continuous service) as if it were continuous service for the purposes of the position offered to the employee.
- (3) The Minister of Education may determine whether a school is directly affected by a closure or merger, and that determination is binding on all parties.
- (4) Subsection (1)(b) is subject to any contrary provision in an employment agreement that provides for a payment on the ground that the employee's position has ceased to exist, but only if that payment is less than the amount that would otherwise be payable in any case to which subsection (1) does not apply.
- (5) A collective employment agreement that binds employees in schools may provide, consistently with subsections (1) and (2), for the manner in which those subsections are to apply to those employees.

Section 77HA: inserted, on 6 April 2004, by section 5 of the State Sector Amendment Act 2004 (2004 No 15).

#### **77HB Appointment of employees following closure or merger of schools**

- (1) Sections 77G and 77H do not apply to an appointment to a position in a school if—
  - (a) the appointment is made in connection with the closure of a school under section 154 of the Education Act 1989 or the merger of schools under section 156A of that Act; and
  - (b) the position that the person previously held has ceased to exist as a result of the closure or merger.
- (2) Subsection (1) does not apply to the appointment of an employee to the position of principal.

Section 77HB: inserted, on 6 April 2004, by section 5 of the State Sector Amendment Act 2004 (2004 No 15).

**77I Acting appointments**

- (1) In the case of absence from duty of any employee (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position with an employer (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the employer to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.
- (2) No such direction and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee has not been appointed to any position to which the direction relates.

Section 77I: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

**Part 7B****Senior appointments in education service**

Part 7B: inserted, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

**77IA Chief executives of institutions**

Notwithstanding anything to the contrary in any other enactment, the appointment and conditions of employment of every chief executive of a tertiary education institution shall be determined under this Act and not otherwise.

Section 77IA: inserted, on 19 December 1989, by section 22 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 77IA: amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

**77IB Appointment of chief executive**

- (1) Subject to section 77IC, each Council of a tertiary education institution shall appoint its chief executive in accordance with the provisions of this section.
- (2) Where there is a vacancy or an impending vacancy in the position of chief executive of a tertiary education institution, the Council of the institution shall notify the vacancy or impending vacancy in such manner as it thinks sufficient to enable suitably qualified persons to apply for the position.
- (3) The Council may—
  - (a) examine applicants for the position; and
  - (b) seek advice from such sources as it considers relevant.

- (4) The Council may invite such other persons as it thinks fit to assist it to decide on the person to be appointed and any person so invited may take part in the examination of applicants or in the Council's deliberations on the matter or in both.
- (5) In deciding upon the person to be appointed as chief executive, the Council shall have regard to the need to appoint a person who—
  - (a) can discharge the specific responsibilities placed on the chief executive; and
  - (b) will imbue the employees with a spirit of service to the institution and to the community; and
  - (c) will promote efficiency; and
  - (d) will manage the institution in a responsible manner that reflects the needs of academic freedom, accountability, and the proper use of resources; and
  - (e) will maintain appropriate standards of integrity and conduct among employees and ensure the well-being of students attending the institution; and
  - (f) will ensure that the institution is a good employer; and
  - (g) will promote equal employment opportunities.

Section 77IB: inserted, on 19 December 1989, by section 22 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 77IB(1): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77IB(2): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

### **77IC Reappointment of chief executive**

A Council may reappoint its existing chief executive for a further term without first notifying the impending vacancy or examining other applicants.

Section 77IC: inserted, on 19 December 1989, by section 22 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

### **77ID Conditions of employment of chief executive**

- (1) Every chief executive shall be appointed for a term of not more than 5 years.
- (2) Every chief executive shall be eligible for reappointment from time to time.
- (3) Except where specific conditions of employment for a chief executive are provided in this Act, the conditions of employment of a chief executive shall be determined in each case by agreement between the Council of the institution and the chief executive, but the Council shall obtain the written concurrence of the State Services Commissioner to the conditions of employment before finalising the conditions of employment with the chief executive.

Section 77ID: inserted, on 19 December 1989, by section 22 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 77ID(3): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

### **77IE Removal from office**

The Council, for just cause or excuse, may remove the chief executive from office.

Section 77IE: inserted, on 19 December 1989, by section 22 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

### **77IF Acting chief executive**

(1) Where—

- (a) there is a vacancy in the position of a chief executive of a tertiary education institution; or
- (b) a chief executive of a tertiary education institution is absent from duty (from whatever cause arising),—

all or any of the functions, powers, and duties of the chief executive or pertaining to the position may be exercised and performed by an employee, for the time being directed by the Council of the tertiary education institution to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

- (2) No such direction and no acts done by any person acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the person had not been appointed to the position of chief executive.
- (3) The Council of the tertiary education institution shall determine the conditions of employment that are to apply to any person directed under subsection (1) to exercise and perform any of the functions, powers, and duties of a chief executive.

Section 77IF: inserted, on 19 December 1989, by section 22 of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 77IF(1): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77IF(1)(a): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77IF(1)(b): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 77IF(3): amended, on 25 January 2005, pursuant to section 17(b) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

### **77J Appointments of senior staff**

*[Repealed]*

Section 77J: repealed, on 15 May 1991, by section 12 of the State Sector Amendment Act 1991 (1991 No 31).

**77K Conditions of employment of principals**

*[Repealed]*

Section 77K: repealed, on 15 May 1991, by section 12 of the State Sector Amendment Act 1991 (1991 No 31).

**77L Conditions of employment of senior staff (other than principals)**

*[Repealed]*

Section 77L: repealed, on 15 May 1991, by section 12 of the State Sector Amendment Act 1991 (1991 No 31).

**77LA Conditions of employment of senior staff in universities or technical institutes**

*[Repealed]*

Section 77LA: repealed, on 15 May 1991, by section 12 of the State Sector Amendment Act 1991 (1991 No 31).

**77M Application of Labour Relations Act 1987 in respect of senior positions**

*[Repealed]*

Section 77M: repealed, on 15 May 1991, by section 12 of the State Sector Amendment Act 1991 (1991 No 31).

**78 Choice of procedure**

*[Repealed]*

Section 78: repealed, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

**79 General principles**

*[Repealed]*

Section 79: repealed, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

**80 Equal employment opportunities**

*[Repealed]*

Section 80: repealed, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

**81 Amendments to Education Act 1964**

*[Repealed]*

Section 81: repealed, on 1 October 1989, by section 3 of the State Sector Amendment Act 1989 (1989 No 67).

## Part 8

### Miscellaneous provisions

#### 82 Medical examinations

A chief executive may require any applicant for appointment to that department, or any employee of the department, to undergo a medical examination, at the expense of the department, by a medical practitioner nominated by the chief executive.

Compare: 1962 No 132 s 67

Section 82: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

#### 83 Instructions

Subject to this Act and without restricting the powers of a chief executive, a chief executive may from time to time issue instructions that shall be observed by all employees of the department.

Compare: 1962 No 132 s 73

### *Superannuation*

Heading: inserted, on 1 August 1990, by section 2 of the State Sector Amendment Act 1990 (1990 No 78).

#### 84 Interpretation

For the purposes of sections 84A and 84B,—

**contribute**, in relation to a superannuation scheme, means to make superannuation contributions to the scheme to provide to a significant extent the benefits payable by the scheme, not being merely nominal contributions or contributions only to meet the costs of administration and management of investments of the scheme

**employee** includes a chief executive

**employer**—

- (a) means a person who pays, or is liable to pay, to any person (being an employee) any earnings as an employer; but
- (b) means the chief executive of the Ministry within the meaning of section 91A(1) of the Education Act 1989, for the duration of the application period in that section, in relation to—
  - (i) an institution that is subject to Part 9 of that Act; or
  - (ii) a free kindergarten within the meaning of section 120 of that Act; and
- (c) includes any person or organisation whose officers or employees were, immediately before 1 July 1992, entitled to elect or required to become

contributors to the Government Superannuation Fund established under the Government Superannuation Fund Act 1956

**State services** includes—

- (a) any tertiary education institution:
- (b) any employer within the meaning of this section

**superannuation scheme** or **scheme** means any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).

Section 84: substituted, on 25 January 2005, by section 16(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 84 **superannuation scheme** or **scheme**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **84A Power to establish superannuation schemes for officers and employees**

An employer in the State services may—

- (a) arrange for any superannuation scheme or schemes to be established for its officers or employees (or both):
- (b) join with another employer (whether or not in the State services) in arranging for any superannuation scheme, or any trust arrangement that is part of a superannuation scheme, to be established for the purpose of providing, or facilitating the provision of, superannuation for its officers or employees (or both):
- (c) arrange for its officers or employees to become members of any established superannuation scheme:
- (d) provide arrangements in respect of the superannuation of any individual officer or employee.

Section 84A: substituted, on 25 January 2005, by section 16(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

#### **84B Contributions to superannuation schemes**

An employer in the State services may contribute to a superannuation scheme for the purpose of providing retirement benefits to its officers or employees (or both) only if—

- (a) *[Repealed]*
- (b) the scheme provides that the sum of all benefits (including any lump sum payments, annuities, and other benefits) payable from the scheme in respect of any member of the scheme will not exceed the sum of—
  - (i) contributions paid by or on behalf of a member and investment earnings on the contributions; and
  - (ii) any allocations to the member from surplus funds held within the scheme; and

- (iii) the amount paid in respect of that member from any insurance policy effected for the benefit of members of the scheme; and
- (c) the trust deed of the scheme defines the rates or amounts (if any) of contributions of the employer or officers or employees; and
- (d) the trust deed of the scheme entitles the employer to cease contributing to the scheme on behalf of a person if that person ceases to be an officer or employee of the employer; and
- (e) the benefits provided by the scheme are fully funded as they accrue; and
- (f) the scheme, if it enables members to withdraw from the scheme, enables withdrawing members to transfer to other superannuation schemes the value (as determined in accordance with the terms of the scheme) of the benefits attributable to that person's membership of the scheme up to the date of withdrawal; and
- (g) the scheme enables any person who becomes an officer or employee of that employer, if the employer agrees to contribute to the scheme on that person's behalf, to become a member of the scheme and to transfer to the scheme the value of the benefits attributable to that person's membership of other superannuation schemes; and
- (h) the trust deed of the scheme does not permit amendments to be made to the scheme that would result in any provision of paragraphs (a) to (g) ceasing to apply to the scheme.

Section 84B(a): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **84C Obligation to obtain confirmation from Government Actuary that scheme meets requirements**

*[Repealed]*

Section 84C: repealed, on 25 January 2005, by section 16(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

#### **84D Contributions to superannuation schemes**

*[Repealed]*

Section 84D: repealed, on 25 January 2005, by section 16(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

#### **85 Offence to attempt to influence Commissioner or chief executive**

- (1) Every person commits an offence against this section who directly or indirectly solicits or endeavours to influence the Commissioner or any chief executive or any other person or persons to whom the Commissioner or the chief executive has delegated powers under section 23 or section 41 with respect to decisions on the matters described in section 5 or section 33.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.



- (3) Nothing in this section shall apply to any person giving information or advice or making representations to the Commissioner or to the chief executive or to any other person or persons acting under delegation from the Commissioner or the chief executive in respect of any matter at the request or invitation of the Commissioner or the chief executive or to any other person or persons acting under delegation.
- (4) Nothing in this section shall be construed so as to prevent any organisation, being an organisation representing employees or any class or classes thereof, from making representations to the Commissioner or to the chief executive or to any other person or persons acting under delegation from the Commissioner or the chief executive on any matter affecting the salaries, wages, or conditions of employment of any employee or class of employees.
- (5) Nothing in this section shall be construed so as to prevent the Commissioner from making representations to the chief executive, or the chief executive making representations to the Commissioner, (or to any person or persons acting under delegation in either case) on any matter whatever, whether relating to a decision on an individual employee or otherwise.

Compare: 1962 No 132 s 76; 1964 No 57 s 7; 1978 No 37 s 9

Section 85 heading: amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 85(1): amended, on 18 July 2013, by section 57 of the State Sector Amendment Act 2013 (2013 No 49).

Section 85(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 85(3): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 85(4): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

Section 85(5): amended, on 19 December 1989, pursuant to section 33(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

## **86 Immunity for Public Service chief executives and employees**

- (1) Public Service chief executives and employees are immune from liability in civil proceedings for good-faith actions or omissions in pursuance or intended pursuance of their duties, functions, or powers.
- (2) *See also* section 6 of the Crown Proceedings Act 1950.

Section 86: replaced, on 18 July 2013, by section 58 of the State Sector Amendment Act 2013 (2013 No 49).

## **87 Amendments to other enactments**

The enactments specified in Schedule 5 are hereby amended in the manner indicated in that schedule.

## **88 Repeals and transitional provision**

- (1) The enactments specified in Schedule 6 are hereby repealed.

- (2) Every reference in any other enactment to the State Services Act 1962 or the State Services Conditions of Employment Act 1977 shall hereafter be read as a reference to the State Sector Act 1988.

## **89 Revocations**

The regulations and orders specified in Schedule 7 are hereby revoked.

## **90 Consequential amendments in relation to repeal of State Services Act 1962 and State Services Conditions of Employment Act 1977**

Unless in any case the context otherwise requires, and subject to the provisions of this Act, in any other enactment or in any regulations or in any instrument—

- (a) every reference to the State Services Act 1962 or to the State Services Conditions of Employment Act 1977 shall be read as a reference to the State Sector Act 1988:
- (b) every reference to an officer, probationer, wage-worker, or temporary employee under the State Services Act 1962 shall be read as a reference to an employee under the State Sector Act 1988:
- (c) every reference to the Chairman of the State Services Commission shall be read as a reference to the State Services Commissioner under this Act:
- (d) every reference to a permanent head shall be read as a reference to a chief executive:
- (e) every reference to a matter being determined under the State Services Conditions of Employment Act 1977 shall be read as a reference to a matter being determined under the State Sector Act 1988.

Section 90(c): amended, on 19 December 1989, pursuant to section 33(3) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

### *Transitional provisions and savings*

## **91 Transitional provisions for permanent heads**

*[Repealed]*

Section 91: repealed, on 18 July 2013, by section 59 of the State Sector Amendment Act 2013 (2013 No 49).

## **92 Transitional provisions for senior executive service**

*[Repealed]*

Section 92: repealed, on 25 January 2005, by section 19(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

## **93 Transitional provisions in respect of appointments to Public Service**

Every person who, at the commencement of this Act, holds any position in the Public Service shall continue to hold that position as if that person had been appointed under this Act.

**94 Identical conditions of employment in respect of State services**

- (1) The terms and conditions of employment of every person who, at the commencement of this Act, holds any position in the State services shall, on 1 April 1988 (and thereafter until varied) be identical with the terms and conditions of that person's employment in the State services immediately before 1 April 1988.
- (2) Notwithstanding anything in subsection (1), no provision of any repealed Act that is inconsistent with any express provision of this Act shall, by virtue of that subsection, continue to have effect.

**95 Awards and agreements**

Every award and every agreement relating to the terms and conditions of employment of employees in the State services which was in force immediately before the commencement of this Act shall continue in force after the commencement of 1 April 1988 notwithstanding any of the other provisions of this Act. Any such award or agreement shall have effect according to its tenor.

**96 Determinations and orders**

- (1) Every determination and every order of the Arbitration Commission or the Labour Court, being a determination or order relating to terms and conditions of employment of employees of the State services, which was made under the State Services Act 1962 or the State Services Conditions of Employment Act 1977 and which was in force immediately before the commencement of this Act,—
  - (a) shall continue in force, except so far as other provision is duly made under this Act fixing the terms and conditions of employment to which that determination or order relates; and
  - (b) shall be deemed to be an award or an agreement registered under Part 7 of the Labour Relations Act 1987; but
  - (c) the rates of remuneration included in a determination or order deemed by this subsection to be an award or an agreement registered under Part 7 of the Labour Relations Act 1987 shall be paid rates.
- (2) An award or an agreement fixing the terms and conditions of employment of the employees of any department may be delivered to the Arbitration Commission for registration under Part 7 of the Labour Relations Act 1987 at any time before the close of 30 June 1988.
- (3) Except as provided in subsection (6), where an award or agreement fixing the terms and conditions of employment of employees of the State services has not been delivered to the Arbitration Commission for registration before the close of 30 June 1988, no award or agreement fixing conditions of employment of those employees may be registered until after the expiry date of the determination or order deemed to be an award or agreement under subsection (1).

- (4) Where any dispute arises between the parties over any matters to be incorporated into the award or agreement that will supersede a determination that is deemed by this section to be an award or agreement, either party may, before the close of 30 June 1988, invoke the disputes procedure set out in Schedule 6 of the Labour Relations Act 1987.
- (5) In making a decision on the dispute, the disputes committee or the Labour Court shall determine—
  - (a) whether the matter or matters in dispute are identical terms or conditions of employment to which section 94 applies; and
  - (b) if so, whether they should be incorporated in the proposed award or agreement.
- (6) Where, as at the close of 30 June 1988, the only matters not settled in relation to the completion of an award or agreement are matters that have been referred to a disputes committee under subsection (4), that award or agreement may, notwithstanding any of the other provisions of this section, be delivered to the Arbitration Commission for registration forthwith upon the decision of the disputes committee or the Labour Court being advised to the parties.
- (7) Except as provided in subsection (8), every award or agreement registered by the Arbitration Commission under this section shall come into force on 1 July 1988.
- (8) The Commission may make an adjustment, with effect from the commencement of 1 April 1988, to the salaries of any person or group of persons who, at the commencement of this Act,—
  - (a) held positions to which section 12(1)(a) of the Higher Salaries Commission Act 1977 applied; or
  - (b) belonged to a group or class of employees whose salary scale had been the subject of an adjustment that took effect on 10 November 1987 but who have not received an adjustment of at least 7% to their salaries as a result of that adjustment.
- (9) Any such adjustment made by the Commission under subsection (8) shall be incorporated into the award or agreement that is to come into force on 1 July 1988.
- (10) Except where there is only 1 employer involved, every document registered under this section shall be an award.

#### **97 Clauses relating to disputes of rights and personal grievances**

Every determination or order deemed to be registered under Part 7 of the Labour Relations Act 1987 by section 96 of this Act shall be deemed to include—

- (a) with effect from the commencement of 1 April 1988, the clauses set out in Schedule 6 of that Act (which clauses relate to disputes of rights); and

- (b) with effect from the commencement of 1 July 1988, the clauses set out in Schedule 7 of that Act (which clauses relate to settlement of personal grievances).

### **98 Expiry date of determinations and orders**

Every determination or order—

- (a) deemed to be registered under Part 7 of the Labour Relations Act 1987 by section 96(1) of this Act; or
- (b) delivered for registration under section 96(2) or (6) of this Act,—

shall be deemed to include an expiry date which shall be the first date upon which any of the conditions of employment contained in that determination or order could have been amended under section 6 of the State Services Conditions of Employment Act 1977 other than by way of amending determination under section 24 of the State Services Conditions of Employment Act 1977.

### **99 Mandatory registration**

- (1) Any award or agreement delivered to the Arbitration Commission for registration under section 96, shall, subject to subsection (2) of this section, be registered by the Arbitration Commission notwithstanding that the award or agreement does not comply with the requirements of section 150 or section 164 of the Labour Relations Act 1987.
- (2) Notwithstanding subsection (1), an award or agreement to which that subsection applies may not be registered if any matter contained in it is contrary to any enactment.

### **100 Recognition of service organisations as unions**

Every organisation recognised immediately before the commencement of this Act as a service organisation under the State Services Conditions of Employment Act 1977 shall be deemed to be registered under the Labour Relations Act 1987 as a union of workers with the coverage recognised under the State Services Conditions of Employment Act 1977 on 31 March 1988, notwithstanding that it may have fewer than 1 000 financial members, and section 30 of the Labour Relations Act 1987 shall apply to each such organisation accordingly.

### **101 Union rules**

- (1) Every union that is deemed to be registered under the Labour Relations Act 1987 by section 100 of this Act shall, within the period of 12 months beginning on 1 April 1988, amend its rules so as to ensure that they comply with the requirements as to rules of unions contained in that Act, and any amendment made to the rules after the date of commencement of this Act shall so comply.
- (2) If, at the end of the period of 12 months specified in subsection (1), the Registrar of Unions is satisfied that any rule or rules of any union or employers or

organisation do not comply with the requirements of the Labour Relations Act 1987, the Registrar may amend the rule or rules so as to ensure that it or they comply with those requirements, but any union or organisation affected by such an amendment may appeal to the Labour Court against the Registrar's decision to amend or against any part of that decision.

- (3) Nothing in this section affects the immediate application, as from the commencement of this Act, of those sections of the Labour Relations Act 1987 which deem certain rules to be included in the rules of unions.
- (4) The Registrar of Unions shall not exercise the power conferred by section 40(2) of the Labour Relations Act 1987 in respect of any union rules that are in force at the date of commencement of this Act until the expiration of the period of 12 months specified in subsection (1) of this section.

### **102 Deferring operation of sections of the Labour Relations Act 1987**

Sections 49 and 52 of the Labour Relations Act 1987 shall not, until 1 April 1989, apply in respect of any organisation that has been deemed to be a union by section 100.

### **103 Union membership**

- (1) Where, at the commencement of this Act, any determination contains a membership clause, that clause shall continue to have effect according to its tenor notwithstanding—
  - (a) the repeal of the provisions under which it was made; and
  - (b) the provisions of the Labour Relations Act 1987 relating to the insertion of union membership clauses in awards or agreements.
- (2) The provisions of the Labour Relations Act 1987 relating to union membership clauses shall apply in respect of the insertion of any union membership clause in any award or agreement after the commencement of this Act, including the replacement of any membership clause to which subsection (1) applies.
- (3) Every service organisation that is deemed to be a union by section 100 shall, for a period of 12 months beginning on 1 April 1988, have exclusive and unchangeable coverage of the persons in respect of whom it was recognised under the State Services Conditions of Employment Act 1977 immediately before the commencement of this Act.

### **104 Causes of action**

All matters and proceedings commenced under or in accordance with the State Services Conditions of Employment Act 1977 and pending or in progress at the commencement of this Act may be continued and completed as if this Act had not been passed.

### **105 Rights of employees of Public Service**

Notwithstanding the repeal of the State Services Act 1962, the provisions of sections 45 to 47, 55 to 59, and 70A and of Part 4 (other than the provisions of section 64(1)(a)) of that Act shall, until the close of 30 June 1988, continue to apply to employees in the Public Service as if this Act had not been passed.

### **106 Application of repealed provisions**

- (1) The following provisions of the State Services Act 1962, namely, the provisions of—
  - (a) sections 22 to 26; and
  - (b) sections 28 to 31; and
  - (c) sections 32 to 39; and
  - (d) sections 44 to 49; and
  - (e) sections 51 to 60; and
  - (f) Parts 4 and 5—

shall continue to apply for the purposes of this Act only to the extent that they are expressly referred to and expressly applied by this Act or any other Act.

- (2) Where, before the commencement of this Act, any person was required by or under any Act or instructions, in force at the commencement of this Act, to retire from any office or employment on attaining a specified age, nothing in this Act entitles that person to continue in that office or employment after attaining that age.

### **107 Grading reviews of employees of Public Service**

- (1) Notwithstanding anything in this Act, if, immediately before 1 July 1988, any person has lodged an application under section 45 of the State Services Act 1962 for a review of the grading of the position that that person occupied, the provisions of that Act, so far as they are applicable to such an application and any rights of review or rights of appeal flowing therefrom, shall continue to apply to that application and to any such rights of review and appeal as if the State Services Act 1962 had not been repealed by this Act.
- (2) The decision on any application for review shall be implemented by the chief executive of the department affected in the same manner as if the State Services Act 1962 were still in force and as if that chief executive were the Commission.

### **108 Appeal rights of employees of Public Service**

- (1) Notwithstanding anything in this Act if, immediately before 1 July 1988, an appeal under section 57 or section 64 of the State Services Act 1962 is pending or if there is a right to such an appeal, either to the State Services Commission or to the Public Service Appeal Board, the provisions of that Act, so far as they

are applicable, shall continue to apply to that appeal as if the State Services Act 1962 had not been repealed.

- (2) Notwithstanding anything in this Act, if, immediately before 1 April 1988,—
  - (a) an appeal under section 64(1)(a) of the State Services Act 1962 is pending; or
  - (b) there is a right to such an appeal,—the provisions of that Act, so far as they are applicable, shall continue to apply to that appeal as if the State Services Act 1962 had not been repealed.
- (3) The decision on any appeal to which subsection (1) or subsection (2) of this section applies shall be binding on the employee, the Commission, and on any chief executive who may be affected and shall be implemented as if the State Services Act 1962 were still in force.

#### **109 Apprenticeships preserved**

- (1) Every indenture of apprenticeship entered into under the State Services Act 1962 before the date of the commencement of this Act and still subsisting immediately before that date shall continue in force on the same terms and conditions (but subject to any necessary modifications) as if the State Services Act 1962 had not been repealed.
- (2) In any such case, as from the commencement of this Act, the chief executive shall be the employer or the master for the purposes of the indenture of apprenticeship, and every reference in the indenture of apprenticeship to the Commission shall be read as a reference to the chief executive.
- (3) The repeal of section 14 of the State Services Conditions of Employment Amendment Act 1987 shall not affect any indenture of apprenticeship continued in force by that section.

#### **110 Provisions relating to Commission**

- (1) Every reference in any enactment or document to the Public Service Commissioner or to the Public Service Commission or to the office of either of them shall, after the commencement of this Act, unless the context otherwise requires, be read as references to the State Services Commission under this Act or the Office of the State Services Commission, as the case may be.
- (2) Every reference to the State Services Commission in any enactment passed or document made before or after the passing of this Act shall, unless the context otherwise requires, be read as a reference to the State Services Commission continued by this Act.
- (3) Every person who, immediately before the commencement of this Act, held office as a member of the Commission shall be deemed to have been appointed under section 12.



- (4) The person who, immediately before the commencement of this Act, held office as the Chairman of the Commission shall be deemed to have been appointed as Chief Commissioner under section 12(2).

**111 General liabilities of Commission**

- (1) All references to the Commission in any manual, or document whatever (not being an enactment) that is subsisting immediately before the commencement of this Act, shall, unless the Commission declares otherwise, be read as a reference to the appropriate department or chief executive, as the case may require.
- (2) All contracts, engagements, and liabilities and all rights and authorities of any nature whatever that, immediately before the commencement of this Act, existed between an individual in the Public Service and the Commission shall, unless the context otherwise requires, continue to exist as if the chief executive of the department in which the individual is employed were the Commission.

**112 Savings**

Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the State Services Conditions of Employment Amendment Act 1987 does not affect the amendments made by sections 16(1), 16(4), 18, 20(1), and 23 of that Act or the rights conferred by sections 19, 21, and 22 of that Act.

## Schedule 1

### Departments of the Public Service

ss 2(1), 27

Schedule 1: substituted, on 19 December 1989, by section 28(1) of the State Sector Amendment Act 1989 (1989 No 136).

Crown Law Office  
Department of Conservation  
Department of Corrections  
Department of Internal Affairs  
Department of the Prime Minister and Cabinet  
Education Review Office  
Government Communications Security Bureau  
Inland Revenue Department  
Land Information New Zealand  
Ministry for Culture and Heritage  
Ministry for Pacific Peoples  
Ministry for Primary Industries  
Ministry for Women  
Ministry for the Environment  
Ministry of Business, Innovation, and Employment  
Ministry of Defence  
Ministry of Education  
Ministry of Foreign Affairs and Trade  
Ministry of Health  
Ministry of Justice  
Ministry of Maori Development  
Ministry of Social Development  
Ministry of Transport  
New Zealand Customs Service  
Serious Fraud Office  
State Services Commission  
Statistics New Zealand  
The Treasury

Schedule 1 Archives New Zealand: repealed, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

Schedule 1 Archives New Zealand (Te Rua Mahara o te Kāwanatanga): repealed, on 1 February 2011, by section 19 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Schedule 1 Audit Department: repealed, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

Schedule 1 Canterbury Earthquake Recovery Authority: repealed, on 1 February 2015, by clause 3(1) of the State Sector (Establishment of Canterbury Earthquake Recovery Authority as Departmental Agency) Order 2014 (LI 2014/372).

Schedule 1 Customs Department: repealed, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Schedule 1 Department for Courts: repealed, on 1 October 2003, by section 7(1)(a) of the State Sector Amendment Act 2003 (2003 No 41).

Schedule 1 Department of Building and Housing: repealed, on 1 July 2012, by clause 4(1) of the State Sector (Ministry of Business, Innovation, and Employment) Order 2012 (SR 2012/91).

Schedule 1 Department of Child, Youth and Family Services: repealed, on 1 July 2006, by clause 3 of the State Sector (Department of Child, Youth and Family Services) Order 2006 (SR 2006/128).

Schedule 1 Department of Corrections: inserted, on 1 October 1995, by clause 2 of the State Sector Order 1995 (SR 1995/28).

Schedule 1 Department of Health: repealed, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Schedule 1 Department of Justice: repealed, on 1 December 2004, by section 6(2) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Schedule 1 Department of Labour: repealed, on 1 July 2012, by clause 4(1) of the State Sector (Ministry of Business, Innovation, and Employment) Order 2012 (SR 2012/91).

Schedule 1 Department of Scientific and Industrial Research: repealed, on 10 April 1998, by section 48(3) of the Crown Research Institutes Act 1992 (1992 No 47).

Schedule 1 Department of Social Welfare: repealed (with effect on 1 October 2001), on 2 August 2003, by section 7(1)(c) of the State Sector Amendment Act 2003 (2003 No 41).

Schedule 1 Department of Statistics: repealed, on 15 December 1994, by section 2(6) of the Statistics Amendment Act 1994 (1994 No 159).

Schedule 1 Department of Survey and Land Information: repealed, on 1 July 1996, by section 5 of the Survey Amendment Act 1996 (1996 No 55).

Schedule 1 Department of Work and Income: repealed (with effect on 1 October 2001), on 2 August 2003, by section 7(1)(d) of the State Sector Amendment Act 2003 (2003 No 41).

Schedule 1 Government Communications Security Bureau: inserted, on 2 April 2003, by section 33(3) of the Government Communications Security Bureau Act 2003 (2003 No 9).

Schedule 1 Government Printing Office: repealed, on 31 December 1990, by section 32(1) of the Acts and Regulations Publication Act 1989 (1989 No 142).

Schedule 1 Government Superannuation Fund Department: repealed, on 7 May 1999, by section 2(a) of the State Sector Amendment Act 1999 (1999 No 47).

Schedule 1 Housing Corporation of New Zealand: repealed, on 1 May 1993, by section 17 of the Housing Corporation Amendment Act 1992 (1992 No 78).

Schedule 1 Iwi Transition Agency: repealed, on 1 January 1992, by section 9(1) of the Ministry of Maori Development Act 1991 (1991 No 145).

Schedule 1 Land Information New Zealand: inserted, on 1 July 1996, by section 5 of the Survey Amendment Act 1996 (1996 No 55).

Schedule 1 Ministry for Culture and Heritage: inserted, on 1 October 2000, by section 12 of the Archives, Culture, and Heritage Reform Act 2000 (2000 No 32).

Schedule 1 Ministry for Pacific Peoples: inserted, on 1 December 2015, by clause 3(2) of the State Sector (Ministry for Pacific Peoples) Order 2015 (LI 2015/244).

Schedule 1 Ministry for Primary Industries: inserted, on 30 April 2012, by clause 3(2) of the State Sector (Ministry for Primary Industries) Order 2012 (SR 2012/54).

Schedule 1 Ministry for Women: inserted, on 1 December 2015, by clause 3(2) of the State Sector (Ministry for Women) Order 2015 (LI 2015/245).

Schedule 1 Ministry of Agriculture: repealed, on 1 March 1998, by section 4 of the Ministry of Agriculture and Forestry (Restructuring) Act 1997 (1997 No 100).

Schedule 1 Ministry of Agriculture and Fisheries: repealed, on 1 July 1995, by section 5 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

Schedule 1 Ministry of Agriculture and Forestry: repealed, on 30 April 2012, by clause 3(1) of the State Sector (Ministry for Primary Industries) Order 2012 (SR 2012/54).

Schedule 1 Ministry of Business, Innovation, and Employment: inserted, on 1 July 2012, by clause 4(2) of the State Sector (Ministry of Business, Innovation, and Employment) Order 2012 (SR 2012/91).

Schedule 1 Ministry of Commerce: repealed, on 7 September 2000, by section 8(1) of the Ministry of Economic Development Act 2000 (2000 No 28).

Schedule 1 Ministry of Cultural Affairs: repealed, on 1 October 2000, by section 12 of the Archives, Culture, and Heritage Reform Act 2000 (2000 No 32).

Schedule 1 Ministry of Defence: amended, on 1 April 1990, by section 103 of the Defence Act 1990 (1990 No 28).

Schedule 1 Ministry of Economic Development: repealed, on 1 July 2012, by clause 4(1) of the State Sector (Ministry of Business, Innovation, and Employment) Order 2012 (SR 2012/91).

Schedule 1 Ministry of Energy: repealed, on 31 December 1990, by section 3(2) of the Ministry of Energy (Abolition) Act 1989 (1989 No 140).

Schedule 1 Ministry of External Relations and Trade: repealed, on 1 July 1993, by section 6(1) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Schedule 1 Ministry of Fisheries: repealed, on 1 July 2011, by clause 3 of the State Sector (Application of Certain Provisions to Transfer of Functions from Ministry of Fisheries to Ministry of Agriculture and Forestry) Order 2011 (SR 2011/136).

Schedule 1 Ministry of Foreign Affairs and Trade: inserted, on 1 July 1993, by section 6(1) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Schedule 1 Ministry of Forestry: repealed, on 1 March 1998, by section 4 of the Ministry of Agriculture and Forestry (Restructuring) Act 1997 (1997 No 100).

Schedule 1 Ministry of Health: inserted, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Schedule 1 Ministry of Housing: repealed, on 1 November 2004, by clause 3 of the State Sector (Department of Building and Housing) Order 2004 (SR 2004/324).

Schedule 1 Ministry of Justice: inserted, on 1 October 1995, by section 5(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Schedule 1 Ministry of Maori Affairs: repealed, on 1 January 1992, by section 9(1) of the Ministry of Maori Development Act 1991 (1991 No 145).

Schedule 1 Ministry of Maori Development: inserted, on 1 January 1992, by clause 2 of the State Sector Order 1991 (SR 1991/95).

Schedule 1 Ministry of Pacific Island Affairs: repealed, on 1 December 2015, by clause 3(1) of the State Sector (Ministry for Pacific Peoples) Order 2015 (LI 2015/244).

Schedule 1 Ministry of Research, Science, and Technology: repealed, on 1 February 2011, by section 18 of the Research, Science, and Technology Act 2010 (2010 No 131).

Schedule 1 Ministry of Science and Innovation: repealed, on 1 July 2012, by clause 4(1) of the State Sector (Ministry of Business, Innovation, and Employment) Order 2012 (SR 2012/91).

Schedule 1 Ministry of Social Development: inserted (with effect on 1 October 2001), on 2 August 2003, by section 7(1)(b) of the State Sector Amendment Act 2003 (2003 No 41).

Schedule 1 Ministry of Women's Affairs: repealed, on 1 December 2015, by clause 3(1) of the State Sector (Ministry for Women) Order 2015 (LI 2015/245).

Schedule 1 Ministry of Youth Affairs: repealed, on 1 October 2003, by clause 3 of the State Sector (Ministry of Youth Affairs) Order 2003 (SR 2003/240).

Schedule 1 National Library Department: repealed, on 6 May 2003, by section 47 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 (2003 No 19).

Schedule 1 National Library of New Zealand Te Puna Mātauranga o Aotearoa: repealed, on 1 February 2011, by section 18 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Amendment Act 2010 (2010 No 132).

Schedule 1 National Provident Fund Department: repealed, on 17 April 1992, by section 16 of the Finance Act 1991 (1991 No 93).

Schedule 1 New Zealand Customs Service: inserted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Schedule 1 New Zealand Food Safety Authority: repealed, on 1 July 2010, by clause 3 of the State Sector (New Zealand Food Safety Authority) Order 2010 (SR 2010/93).

Schedule 1 New Zealand Tourism Department: repealed, on 1 November 1991, by section 18(2) of the New Zealand Tourism Board Act 1991 (1991 No 110).

Schedule 1 Office of Youth Affairs: repealed, on 7 May 1999, by section 2(b) of the State Sector Amendment Act 1999 (1999 No 47).

Schedule 1 Public Trust Office: repealed, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Schedule 1 State Insurance Office: repealed, on 28 June 1990, by section 23(1) of the State Insurance Act 1990 (1990 No 36).

Schedule 1 Statistics New Zealand: inserted, on 15 December 1994, by section 2(6) of the Statistics Amendment Act 1994 (1994 No 159).

Schedule 1 Valuation Department: repealed, on 1 July 1998, by section 14(2) of the Valuation Department (Restructuring) Act 1998 (1998 No 70).

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**Schedule 1A**

ss 27A, 30A

Schedule 1A: inserted, on 1 February 2015, by section 60 of the State Sector Amendment Act 2013 (2013 No 49).

**Departmental agency****Host department**

Schedule 1A: amended, on 19 April 2016, by section 152(1) of the Greater Christchurch Regeneration Act 2016 (2016 No 14).

Schedule 1A: amended, on 1 February 2015, by clause 3(2) of the State Sector (Establishment of Canterbury Earthquake Recovery Authority as Departmental Agency) Order 2014 (LI 2014/372).

**Schedule 2**  
**State enterprises**

*[Repealed]*

s 2(1)

Schedule 2: repealed, on 19 December 1989, by section 29(1) of the State Sector Amendment Act (No 2) 1989 (1989 No 136).

**Schedule 3**  
**Procedure for conciliation and arbitration**

*[Repealed]*

s 69

Schedule 3: repealed, on 15 May 1991, by section 13 of the State Sector Amendment Act 1991 (1991 No 31).

**Schedule 4**  
**Final offer arbitration**

*[Repealed]*

s 71(4)

Schedule 4: repealed, on 15 May 1991, by section 13 of the State Sector Amendment Act 1991 (1991 No 31).

## Schedule 5

### Enactments amended

s 87

**Adult Education Act 1963 (1963 No 16) (RS Vol 14, p 1)***Amendment(s) incorporated in the Act(s).***Apprenticeship Act 1983 (1983 No 16)***Amendment(s) incorporated in the Act(s).***Armed Forces Canteens Act 1948 (1948 No 51) (RS Vol 1, p 143)***Amendment(s) incorporated in the Act(s).***Carter Observatory Act 1938 (1938 No 9) (RS Vol 1, p 429)***Amendment(s) incorporated in the Act(s).***Consumer Council Act 1966 (1966 No 21) (RS Vol 17, p 149)***Amendment(s) incorporated in the Act(s).***Customs Act 1966 (1966 No 19) (RS Vol 2, p 57)***Amendment(s) incorporated in the Act(s).***Department of Social Welfare Act 1971 (1971 No 60)***Amendment(s) incorporated in the Act(s).***Education Act 1964 (1964 No 135) (Reprinted 1975, Vol 3, p 1699)***Amendment(s) incorporated in the Act(s).***Environment Act 1986 (1986 No 127)***Amendment(s) incorporated in the Act(s).***Equal Pay Act 1972 (1972 No 118) (RS Vol 18, p 85)***Amendment(s) incorporated in the Act(s).***Government Superannuation Fund Act 1956 (1956 No 47) (RS Vol 21, p 209)***Amendment(s) incorporated in the Act(s).***Housing Corporation Act 1974 (1974 No 19)***Amendment(s) incorporated in the Act(s).***Industrial Design Act 1966 (1966 No 20) (RS Vol 17, p 225)***Amendment(s) incorporated in the Act(s).*



**Local Government Act 1974 (1974 No 66) (RS Vol 5, p 77)**

*Amendment(s) incorporated in the Act(s).*

**Medical Research Council Act 1950 (1950 No 20) (RS Vol 10, p 75)**

*Amendment(s) incorporated in the Act(s).*

**Mining Act 1971 (1971 No 25) (RS Vol 17, p 355)**

*Amendment(s) incorporated in the Act(s).*

**New Zealand Council for Educational Research Act 1972 (1972 No 35)**

*Amendment(s) incorporated in the Act(s).*

**New Zealand Security Intelligence Service Act 1969 (1969 No 24)**

*Amendment(s) incorporated in the Act(s).*

**Official Information Act 1982 (1982 No 156) (RS Vol 21, p 1)**

*Amendment(s) incorporated in the Act(s).*

**Parental Leave and Employment Protection Act 1987 (1987 No 129)**

*Amendment(s) incorporated in the Act(s).*

**Psychologists Act 1981 (1981 No 5)**

*Amendment(s) incorporated in the Act(s).*

**Public Finance Act 1977 (1977 No 65)**

*Amendment(s) incorporated in the Act(s).*

**Public Trust Office Act 1957 (1957 No 36) (Reprinted 1976, Vol 5, p 4361)**

*Amendment(s) incorporated in the Act(s).*

**Queen Elizabeth the Second Arts Council of New Zealand Act 1974 (1974 No 67)**

*Amendment(s) incorporated in the Act(s).*

**Recreation and Sport Act 1987 (1987 No 13)**

*Amendment(s) incorporated in the Act(s).*

**Scientific and Industrial Research Act 1974 (1974 No 6)**

*Amendment(s) incorporated in the Act(s).*

**Social Security Amendment Act (No 2) 1985 (1985 No 159)**

*Amendment(s) incorporated in the Act(s).*

**Standards Act 1988 (1988 No 5)**

*Amendment(s) incorporated in the Act(s).*

**Testing Laboratory Registration Act 1972 (1972 No 36)**

*Amendment(s) incorporated in the Act(s).*

**Tokelau Amendment Act 1967 (1967 No 38) (Reprinted 1976, Vol 5, p 4498)**

*Amendment(s) incorporated in the Act(s).*

**Trades Certification Act 1966 (1966 No 6) (RS Vol 13, p 761)**

*Amendment(s) incorporated in the Act(s).*

**Union Representatives Education Leave Act 1986 (1986 No 35)**

*Amendment(s) incorporated in the Act(s).*

**Veterinary Services Act 1946 (1946 No 26) (RS Vol 11, p 761)**

*Amendment(s) incorporated in the Act(s).*

## Schedule 6 Enactments repealed

s 88(1)

**Armed Forces Canteens Amendment Act 1956 (1956 No 45) (RS Vol 1, p 152)**

*Amendment(s) incorporated in the Act(s).*

**Health Service Personnel Act 1983 (1983 No 135)**

**Health Service Personnel Amendment Act 1985 (1985 No 144)**

**Health Service Personnel Amendment Act (No 2) 1985 (1985 No 164)**

**Health Service Personnel Amendment Act 1987 (1987 No 121)**

**Local Government Amendment Act (No 3) 1986 (1986 No 50)**

*Amendment(s) incorporated in the Act(s).*

**State Services Act 1962 (1962 No 132) (RS Vol 14, p 601)**

**State Services Amendment Act 1964 (1964 No 57) (RS Vol 14, p 661)**

**State Services Amendment Act 1965 (1965 No 68) (RS Vol 14, p 661)**

**State Services Amendment Act 1966 (1966 No 86) (RS Vol 14, p 662)**

**State Services Amendment Act 1973 (1973 No 15) (RS Vol 14, p 662)**

**State Services Amendment Act (No 2) 1973 (1973 No 92) (RS Vol 14, p 664)**

**State Services Amendment Act 1974 (1974 No 122) (RS Vol 14, p 664)**

**State Services Amendment Act 1978 (1978 No 37) (RS Vol 14, p 664)**

**State Services Amendment Act 1981 (1981 No 94) (RS Vol 14, p 666)**

**State Services Amendment Act 1982 (1982 No 23) (RS Vol 14, p 666)**

**State Services Amendment Act (No 2) 1982 (1982 No 110) (RS Vol 14, p 667)**

**State Services Amendment Act (No 3) 1982 (1982 No 160) (RS Vol 14, p 667)**

**State Services Conditions of Employment Act 1977 (1977 No 95) (RS Vol 14, p 669)**

**State Services Conditions of Employment Amendment Act 1978 (1978 No 41) (RS Vol 14, p 771)**

**State Services Conditions of Employment Amendment Act 1981 (1981 No 132)  
(RS Vol 14, p 772)**

**State Services Conditions of Employment Amendment Act 1983 (1983 No 47)  
(RS Vol 14, p 773)**

**State Services Conditions of Employment Amendment Act 1985 (1985 No 102)**

**State Services Conditions of Employment Amendment Act 1987 (1987 No 17)**

**State Services Conditions of Employment Amendment Act (No 2) 1987 (1987  
No 81)**

**State Services Conditions of Employment Amendment Act (No 3) 1987 (1987  
No 123)**

## **Schedule 7**

### **Regulations and orders revoked**

s 89

**Health Medical Officers' Advisory Committee Regulations 1984 (SR 1984/271)**

**Health Medical Officers' Grading Committee Regulations 1985 (SR 1985/31)**

**Health Service Personnel Amendment Act Commencement Order 1986 (SR 1986/196)**

**Health Service Personnel (Principal Officers) Order 1984 (SR 1984/79)**

**Health Service Personnel (Principal Officers) Order 1984, Amendment No 1 (SR 1985/305)**

**Health Service Personnel (Principal Officers) Order 1984, Amendment No 2 (SR 1987/361)**

**Public Service Regulations 1964 (SR 1964/115)**

**Public Service Regulations 1964, Amendment No 1 (SR 1965/123)**

**Public Service Regulations 1964, Amendment No 2 (SR 1967/39)**

**Public Service Regulations 1964, Amendment No 3 (SR 1969/176)**

**Public Service Regulations 1964, Amendment No 6 (SR 1973/151)**

**Public Service Regulations 1964, Amendment No 8 (SR 1976/78)**

**Public Service Regulations 1964, Amendment No 9 (SR 1983/88)**

**Public Service Regulations 1964, Amendment No 10 (SR 1985/178)**

**Public Service Regulations 1964, Amendment No 11 (SR 1985/285)**

**Public Service Regulations 1964, Amendment No 12 (SR 1987/34)**

**State Services Conditions of Employment Act Suspension Order 1979 (SR 1979/271)**

**State Services Conditions of Employment Order 1978 (SR 1978/218)**

**State Services Conditions of Employment Order 1979 (SR 1979/56)**

**State Services Conditions of Employment Order 1981 (SR 1981/147)**

**State Services Conditions of Employment Order 1982 (SR 1982/272)**

**State Services Conditions of Employment Order 1983 (SR 1983/17)**

**State Services Conditions of Employment Order 1985 (SR 1985/274)**

**State Services Conditions of Employment Order 1987 (SR 1987/210)**

**State Services Salary Order 1974 (SR 1974/32)**

**State Services Salary Order (No 2) 1987 (SR 1987/404)**

## State Sector Amendment Act (No 2) 2004

Public Act	2004 No 114
Date of assent	21 December 2004
Commencement	see section 2

### **1 Title**

- (1) This Act is the State Sector Amendment Act (No 2) 2004.
- (2) In this Act, the State Sector Act 1988 is called “the principal Act”.

### **2 Commencement**

This Act comes into force on 25 January 2005.

### **16 New sections 84 to 84B substituted**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) The entitlement of an officer or employee in the State services under any superannuation arrangement that applies to that officer or employee at the commencement of this section is not affected by—
  - (a) the repeal of sections 84 to 84D of the principal Act by this section; or
  - (b) the amendments to Acts that are contained in Schedule 6 of the Crown Entities Act 2004.

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**State Sector (Ministry for Primary Industries) Order  
2012**  
(SR 2012/54)

Jerry Mateparae, Governor-General

**Order in Council**

At Wellington this 26th day of March 2012

Present:

His Excellency the Governor-General in Council

Pursuant to sections 30A and 30K of the State Sector Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

**Order**

**1 Title**

This order is the State Sector (Ministry for Primary Industries) Order 2012.

**2 Commencement**

This order comes into force on 30 April 2012.

**4 Application of consequential changes to references provisions**

Sections 30H and 30I of the State Sector Act 1988 apply to things coming into force, entered into, or created during the transitional period beginning on 30 April 2012 and ending on 30 June 2013, after the name of the Ministry of Agriculture and Forestry is changed to Ministry for Primary Industries.

Rebecca Kitteridge,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 29 March 2012.



**State Sector (Ministry of Business, Innovation, and  
Employment) Order 2012**  
(SR 2012/91)

Jerry Mateparae, Governor-General

**Order in Council**

At Wellington this 14th day of May 2012

Present:

His Excellency the Governor-General in Council

Pursuant to sections 30A, 30C, and 30K of the State Sector Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

**Order**

**1 Title**

This order is the State Sector (Ministry of Business, Innovation, and Employment) Order 2012.

**2 Commencement**

- (1) Clauses 3 and 7 come into force on 24 May 2012.
- (2) The rest of this order comes into force on 1 July 2012.

**5 Application of employee provisions**

Sections 30E to 30G of the State Sector Act 1988 apply to the transfer of the functions of the former departments and ministries to the Ministry of Business, Innovation, and Employment.

**6 Application of consequential changes to references provisions**

Sections 30H and 30I of the State Sector Act 1988 apply to things coming into force, entered into, or created during the transitional period of 24 months, beginning on 1 July 2012 and ending on 30 June 2014, after the transfer of the functions of the former departments and ministries to the Ministry of Business, Innovation, and Employment.

**7 Transitional provision relating to 2012 Budget documents**

- (1) To avoid doubt, any reference in the following documents to any of the former departments and ministries or to the Ministry of Consumer Affairs must, on and after 1 July 2012, be read as a reference to the Ministry of Business, Innovation, and Employment or to part of the Ministry of Business, Innovation, and Employment, as the context requires:
  - (a) *The Estimates of Appropriations for the Government of New Zealand for the year ending 30 June 2013 (B.5):*
  - (b) *Information Supporting the Estimates of Appropriations for the Government of New Zealand for the year ending 30 June 2013 (B.5A).*
- (2) To avoid doubt, any reference in the following documents to the Responsible Minister for any of the former departments and ministries must, on and after 1 July 2012, be read as a reference to the Responsible Minister for the Ministry of Business, Innovation, and Employment:
  - (a) *The Estimates of Appropriations for the Government of New Zealand for the year ending 30 June 2013 (B.5):*
  - (b) *Information Supporting the Estimates of Appropriations for the Government of New Zealand for the year ending 30 June 2013 (B.5A).*
- (3) The statements of intent for 2012–2015 for the former departments and ministries must be taken to be the Statement of Intent for 2012–2015 for the Ministry of Business, Innovation, and Employment.

Rebecca Kitteridge,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 17 May 2012.

**State Sector (Establishment of Canterbury Earthquake  
Recovery Authority as Departmental Agency) Order 2014**  
(LI 2014/372)

Jerry Mateparae, Governor-General

**Order in Council**

At Wellington this 8th day of December 2014

Present:

His Excellency the Governor-General in Council

Pursuant to sections 30A, 30C, 30K, and 61AB of the State Sector Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

**Order**

**1 Title**

This order is the State Sector (Establishment of Canterbury Earthquake Recovery Authority as Departmental Agency) Order 2014.

**2 Commencement**

This order comes into force on 1 February 2015.

**3 State Sector Act 1988 amended**

- (1), (2) *Amendment(s) incorporated in the Act(s).*
- (3) Sections 30E and 30F of the State Sector Act 1988 apply to the transfer of functions from the department Canterbury Earthquake Recovery Authority to the departmental agency Canterbury Earthquake Recovery Authority.
- (4) Sections 30H and 30I of the State Sector Act 1988 apply to things coming into force, entered into, or created during the transitional period beginning on 1 February 2015 and ending on 18 April 2016 after the transfer of functions referred to in subclause (3).

Michael Webster,  
Clerk of the Executive Council.

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## State Sector (Ministry for Pacific Peoples) Order 2015 (LI 2015/244)

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 27th day of October 2015

Present:

His Excellency the Governor-General in Council

Pursuant to sections 30A and 30K of the State Sector Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

### Order

**1 Title**

This order is the State Sector (Ministry for Pacific Peoples) Order 2015.

**2 Commencement**

This order comes into force on 1 December 2015.

**4 Application of consequential changes to reference provisions**

Sections 30H and 30I of the State Sector Act 1988 apply to enactments or other things coming into force, entered into, or created during the transitional period beginning 1 December 2015 and ending on 1 October 2016, after the name of the Ministry of Pacific Island Affairs is changed to the Ministry for Pacific Peoples.

Michael Webster,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 29 October 2015.

## **State Sector (Ministry for Women) Order 2015** (LI 2015/245)

Jerry Mateparae, Governor-General

### **Order in Council**

At Wellington this 27th day of October 2015

Present:

His Excellency the Governor-General in Council

Pursuant to sections 30A and 30K of the State Sector Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

### **Order**

**1 Title**

This order is the State Sector (Ministry for Women) Order 2015.

**2 Commencement**

This order comes into force on 1 December 2015.

**4 Application of consequential changes to reference provisions**

Sections 30H and 30I of the State Sector Act 1988 apply to enactments or other things coming into force, entered into, or created during the transitional period beginning 1 December 2015 and ending on 1 October 2016, after the name of the Ministry of Women's Affairs is changed to the Ministry for Women.

Michael Webster,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 29 October 2015.

## Reprints notes

### 1 *General*

This is a reprint of the State Sector Act 1988 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Greater Christchurch Regeneration Act 2016 (2016 No 14): section 152(1)

State Sector (Ministry for Women) Order 2015 (LI 2015/245)

State Sector (Ministry for Pacific Peoples) Order 2015 (LI 2015/244)

Education Amendment Act 2015 (2015 No 1): section 46(2)

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Employment Relations Amendment Act 2014 (2014 No 61): section 78

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State Sector (Ministry of Business, Innovation, and Employment) Order 2012 (SR 2012/91)

State Sector (Ministry for Primary Industries) Order 2012 (SR 2012/54)

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Public Records Amendment Act (No 2) 2010 (2010 No 133): section 19

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Archives, Culture, and Heritage Reform Act 2000 (2000 No 32): section 12  
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