



Queensland

# **Public Service and Other Legislation Amendment Bill 2020**





Queensland

# Public Service and Other Legislation Amendment Bill 2020

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**2020**

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**A Bill**

for

***An Act to amend the Industrial Relations Act 2016, the Public Interest Disclosure Act 2010 and the Public Service Act 2008 for particular purposes***

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[s 1]

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**The Parliament of Queensland enacts—** 1

**Part 1 Preliminary** 2

**Clause 1 Short title** 3

This Act may be cited as the *Public Service and Other  
Legislation Amendment Act 2020*. 4  
5

**Part 2 Amendment of Industrial  
Relations Act 2016** 6  
7

**Clause 2 Act amended** 8

This part amends the *Industrial Relations Act 2016*. 9

**Clause 3 Amendment of s 9 (What is an *industrial matter*)** 10

Section 9(2)— 11

*omit, insert—* 12

(2) However, a matter is not an industrial matter if it 13  
is the subject of a proceeding for— 14

(a) an indictable offence; or 15

(b) a public service appeal. 16

**Clause 4 Replacement of s 425 (Limitations on jurisdiction)** 17

Section 425— 18

*omit, insert—* 19

**425 Limitations on jurisdiction** 20

The court does not have jurisdiction to hear and 21



---

	decide a matter about which another Act excludes—	1 2
	(a) the jurisdiction of the court about the matter; or	3 4
	(b) the application of a decision under this Act about the matter.	5 6
<b>Clause 5</b>	<b>Amendment of s 447 (Commission’s functions)</b>	7
	Section 447(1)(n)(i), after ‘another Act’—	8
	<i>insert—</i>	9
	, including for public service appeals	10
<b>Clause 6</b>	<b>Replacement of s 449 (Limitations on jurisdiction)</b>	11
	Section 449—	12
	<i>omit, insert—</i>	13
	<b>449 Limitations on jurisdiction</b>	14
	The commission does not have jurisdiction to hear and decide a matter about which another Act excludes—	15 16 17
	(a) the jurisdiction of the commission about the matter; or	18 19
	(b) the application of a decision under this Act about the matter.	20 21
<b>Clause 7</b>	<b>Amendment of s 529 (Representation of parties generally)</b>	22 23
	Section 529(1), ‘In proceedings’—	24
	<i>omit, insert—</i>	25
	Subject to section 530A(4), in proceedings	26

[s 8]

---

<b>Clause 8</b>	<b>Amendment of s 530 (Legal representation)</b>	1
	Section 530, before subsection (1)—	2
	<i>insert—</i>	3
	(1A) This section applies in relation to proceedings other than a proceeding for a public service appeal.	4 5 6
<b>Clause 9</b>	<b>Insertion of new s 530A</b>	7
	After section 530—	8
	<i>insert—</i>	9
	<b>530A Representation—public service appeals</b>	10
	(1) This section applies in relation to a proceeding for a public service appeal.	11 12
	(2) A party to the appeal may appear personally or by an agent.	13 14
	(3) However, a party may not be represented by a person if—	15 16
	(a) the party has instructed the person to act as the party’s lawyer; and	17 18
	(b) in acting as the party’s lawyer, the person would be subject to the <i>Legal Profession Act 2007</i> .	19 20 21
	(4) Also, a party to an appeal about a promotion decision may be represented by an agent only with the leave of the commission.	22 23 24
<b>Clause 10</b>	<b>Amendment of s 551 (Rules)</b>	25
	Section 551(3)(a)(iv), after ‘ <i>Anti-Discrimination Act 1991</i> ’—	26
	<i>insert—</i>	27
	, the <i>Public Service Act 2008</i>	28

---

<b>Clause 11</b>	<b>Insertion of new ss 562A and 562B</b>	1
	After section 562—	2
	<i>insert—</i>	3
	<b>562A Commission may decide not to hear particular public service appeals</b>	4
		5
	(1) The commission may decide it will only hear an appeal against a decision mentioned in the <i>Public Service Act 2008</i> , section 194(1)(a), (d) or (eb) if the commission is satisfied—	6
		7
		8
		9
	(a) the appellant has used the procedures required to be used by the employee in relation to the decision under a directive under that Act, including the individual employee grievances directive; and	10
		11
		12
		13
		14
	(b) for a fair treatment decision under the <i>Public Service Act 2008</i> , section 194(1)(eb)—it would not be unreasonable to require the appellant to comply with the procedures mentioned in paragraph (a).	15
		16
		17
		18
		19
	(2) The commission may decide it will only hear an appeal against a promotion decision under the <i>Public Service Act 2008</i> if the commission is satisfied, by oral or written submissions, that the appellant has an arguable case for the appeal.	20
		21
		22
		23
		24
	(3) The commission may decide it will not hear a public service appeal against a decision if—	25
		26
	(a) the appellant has made an application to a court or tribunal relating to the decision, whether or not the application has been fully decided; or	27
		28
		29
		30
	(b) the commission reasonably believes, after asking the appellant to establish by oral or written submissions that the appellant has an arguable case for the appeal, that the appeal—	31
		32
		33
		34
		35

[s 11]

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- (i) is frivolous or vexatious; or 1
- (ii) is misconceived or lacks substance; or 2
- (iii) should not be heard for another 3  
compelling reason. 4

**562B Public service appeal to commission is by 5  
way of review 6**

- (1) This section applies to a public service appeal 7  
made to the commission. 8
- (2) The commission must decide the appeal by 9  
reviewing the decision appealed against. 10
- (3) The purpose of the appeal is to decide whether the 11  
decision appealed against was fair and reasonable. 12
- (4) For an appeal against a promotion decision or a 13  
decision about disciplinary action under the 14  
*Public Service Act 2008*, the commission— 15
  - (a) must decide the appeal having regard to the 16  
evidence available to the decision maker 17  
when the decision was made; but 18
  - (b) may allow other evidence to be taken into 19  
account if the commission considers it 20  
appropriate. 21

**562C Public service appeals—decision on appeal 22**

- (1) In deciding a public service appeal, the 23  
commission may— 24
  - (a) confirm the decision appealed against; or 25
  - (b) for an appeal against a promotion 26  
decision—set the decision aside, and return 27  
the matter to the decision maker with a copy 28  
of the decision on appeal and any directions 29  
permitted under a directive of the 30  
commission chief executive under the 31

---

	<i>Public Service Act 2008</i> that the	1
	commission considers appropriate; or	2
	(c) for another appeal—set the decision aside,	3
	and substitute another decision or return the	4
	matter to the decision maker with a copy of	5
	the decision on appeal and any directions	6
	considered appropriate.	7
	(2) In deciding an appeal against a promotion	8
	decision, the commission may set the decision	9
	aside only if the commission finds that the	10
	recruitment or selection process was deficient,	11
	having regard to whether the process complied	12
	with the <i>Public Service Act 2008</i> , a regulation or	13
	a directive of the commission chief executive	14
	under that Act.	15
<b>Clause 12</b>	<b>Amendment of s 564 (Time limit for appeal)</b>	16
	Section 564(3), definition <i>appeal period</i> , paragraph (c)—	17
	<i>omit, insert—</i>	18
	(c) if the decision is a promotion decision—the	19
	decision is publicly notified under the	20
	<i>Public Service Act 2008</i> ; or	21
	(d) if, under another Act, the decision is given	22
	in another way—the decision is given in the	23
	other way.	24
<b>Clause 13</b>	<b>Amendment of s 567 (Nature of appeal)</b>	25
	Section 567(1), after ‘tribunal’—	26
	<i>insert—</i>	27
	, other than a public service appeal to the	28
	commission,	29

[s 14]

---

<b>Clause 14</b>	<b>Amendment of sch 5 (Dictionary)</b>	1
	Schedule 5—	2
	<i>insert</i> —	3
	<i>promotion decision</i> see the <i>Public Service Act 2008</i> , section 194(1)(c).	4
		5
	<i>public service appeal</i> means an appeal against a decision under the <i>Public Service Act 2008</i> , chapter 7.	6
		7
		8
	 <b>Part 3</b>	 9
	<b>Amendment of Public Interest Disclosure Act 2010</b>	10
<b>Clause 15</b>	<b>Act amended</b>	11
	This part amends the <i>Public Interest Disclosure Act 2010</i> .	12
<b>Clause 16</b>	<b>Amendment of s 47 (Relocation of public service employee)</b>	13
		14
	(1) Section 47(3), from ‘an appeals officer’—	15
	<i>omit, insert</i> —	16
	the industrial relations commission under the <i>Industrial Relations Act 2016</i> .	17
		18
	(2) Section 47(4), ‘the <i>Public Service Act 2008</i> ’—	19
	<i>omit, insert</i> —	20
	subsection (3)	21
	(3) Section 47(4)(a), after ‘decision’—	22
	<i>insert</i> —	23
	under the <i>Public Service Act 2008</i>	24
	(4) Section 47(5), ‘appeals officer considers’—	25
	<i>omit, insert</i> —	26

---

	industrial relations commission considers	1
(5)	Section 47(5), ‘appeals officer may’—	2
	<i>omit, insert</i> —	3
	commission may	4
(6)	Section 47(6) and (7), ‘appeals officer’—	5
	<i>omit, insert</i> —	6
	industrial relations commission	7

<b>Part 4</b>	<b>Amendment of Public Service Act 2008</b>	8
		9

<b>Clause 17</b>	<b>Act amended</b>	10
	This part amends the <i>Public Service Act 2008</i> .	11
<b>Clause 18</b>	<b>Amendment of s 9 (Public service employees)</b>	12
	Section 9(1)(c)—	13
	<i>omit, insert</i> —	14
	(c) a fixed term temporary employee; or	15
	(d) a casual employee.	16
<b>Clause 19</b>	<b>Amendment of s 12 (Application of Act to various types of employees etc.)</b>	17
	Section 12(3), ‘or temporary’—	18
	<i>omit, insert</i> —	19
	, fixed term temporary or casual	20
<b>Clause 20</b>	<b>Amendment of s 25 (The management and employment principles)</b>	22
	(1) Section 25(2)(a), after ‘management’—	23
		24

[s 21]

---

- insert—* 1
- , including through the application of positive 2  
performance management principles 3
- (2) Section 25(2)— 4
- insert—* 5
- (d) employment on tenure as the default basis of 6  
employment for employees in the public 7  
service, other than for non-industrial 8  
instrument employees. 9

**Clause 21 Insertion of new s 25A** 10

After section 25— 11

*insert—* 12

**25A Positive performance management principles** 13

- (1) For best practice human resource management 14  
and in recognition that public service employees 15  
are selected on merit under the merit principle, the 16  
management of public service employees must be 17  
directed towards the following— 18
- (a) pro-actively managing the personal and 19  
professional development of public service 20  
employees with a view to continuously 21  
building expertise within the public service; 22
- (b) ensuring regular and constructive 23  
communication between public service 24  
managers and employees in relation to the 25  
matters stated in section 26; 26
- (c) recognising the strengths, requirements and 27  
circumstances of individual employees and 28  
valuing their contributions; 29
- (d) recognising performance that meets or 30  
exceeds expectations; 31



---

	(e) providing opportunities and support to employees for improving performance;	1 2
	(f) continuously improving performance through the provision of training and development;	3 4 5
	(g) identifying at the earliest possible stage performance that does not meet expectations;	6 7 8
	(h) integrating the matters mentioned in paragraphs (a) to (g) into management practices and policies.	9 10 11
	(2) The principles mentioned in subsection (1) are the <i>positive performance management principles</i> .	12 13
	(3) The commission chief executive must make a directive about how the positive performance management principles are to be applied.	14 15 16
<b>Clause 22</b>	<b>Amendment of s 26 (Work performance and personal conduct principles)</b>	17 18
	Section 26(1)(f)—	19
	<i>omit, insert—</i>	20
	(f) continuous improvement in relation to the employee’s work performance, including through training and development; and	21 22 23
<b>Clause 23</b>	<b>Omission of ss 40 and 41</b>	24
	Sections 40 and 41—	25
	<i>omit.</i>	26
<b>Clause 24</b>	<b>Insertion of new ch 3, pt 1A</b>	27
	Chapter 3, after part 1—	28
	<i>insert—</i>	29

---

[s 24]

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<b>Part 1A</b>	<b>Special commissioner</b>	1
<b>42A Functions</b>		2
	The main functions of the special commissioner are to—	3 4
	(a) provide advice to the Minister about areas of public administration relating to a main purpose of this Act; and	5 6 7
	<i>Examples of areas of public administration for paragraph (a)—</i>	8 9
	addressing gender pay equity, promoting a diverse workforce	10 11
	(b) promote the effectiveness and efficiency of government entities by facilitating the development and implementation of whole of government policies; and	12 13 14 15
	(c) conduct administrative inquiries as requested by the Minister under part 7.	16 17
<b>42B Appointment of special commissioner</b>		18
	(1) The Governor in Council may, on the recommendation of the Minister, appoint an appropriately qualified person as the special commissioner.	19 20 21 22
	(2) A disqualified person can not be appointed.	23
	(3) The special commissioner is to be—	24
	(a) paid the remuneration and allowances decided by the Governor in Council; and	25 26
	(b) appointed on the terms and conditions decided by the Governor in Council; and	27 28
	(c) appointed for a term of not more than 5 years.	29 30

---

**42C Preservation of rights**

- 1
- (1) This section applies if the person appointed as 2  
special commissioner is a public service officer. 3
- (2) The person keeps all rights accrued or accruing to 4  
the person as a public service officer as if service 5  
as the special commissioner were a continuation 6  
of service as a public service officer. 7
- (3) At the end of the person’s term of office or on 8  
resignation as a special commissioner, the 9  
person’s service as special commissioner is taken 10  
to be service of a like nature in the public service 11  
for deciding the person’s rights as a public service 12  
officer. 13

**42D Special commissioner subject to direction of 14  
commission chief executive 15**

The special commissioner is subject to the 16  
direction of the commission chief executive, other 17  
than in relation to the conduct of an administrative 18  
inquiry. 19

**Clause 25 Amendment of s 55 (Directives to apply Act to general 20  
and temporary employees) 21**

- (1) Section 55, heading, ‘and temporary’— 22  
*omit, insert—* 23  
**, fixed term temporary and casual** 24
- (2) Section 55(1), ‘or temporary’— 25  
*omit, insert—* 26  
**, fixed term temporary employee or casual** 27

**Clause 26 Amendment of s 62 (Delegation) 28  
Section 62(2)— 29**

[s 27]

---

*omit, insert—* 1

(2) The commission chief executive may also 2  
delegate the following functions to an 3  
appropriately qualified entity— 4

(a) a function under section 88I; 5

(b) a function under section 88IA, other than 6  
the giving of a report under section 7  
88IA(4)(b) that includes a direction. 8

**Clause 27 Omission of ch 3, pt 5 (IRC members)** 9  
Chapter 3, part 5— 10  
*omit.* 11

**Clause 28 Insertion of new s 88IA** 12  
After section 88I— 13  
*insert—* 14

**88IA Commission may conduct review of 15  
procedural aspect of department's handling of 16  
current work performance matters** 17

(1) This section applies if a procedure under a 18  
suspension or discipline directive is being 19  
undertaken by a department chief executive in 20  
relation to a public service employee for a current 21  
work performance matter. 22

(2) The employee the subject of the current work 23  
performance matter may ask the commission to 24  
conduct a review of a procedural aspect of the 25  
department's handling of the work performance 26  
matter. 27

(3) However, the employee may make the request 28  
under subsection (2) only if the employee has 29  
complied, to the extent possible, with the 30  
procedures applying to the employee under a 31

- 
- suspension or discipline directive in relation to the  
work performance matter. 1  
2
- (4) On receiving the request, the commission may— 3
- (a) conduct a review of a procedural aspect of  
the current work performance matter; and 4  
5
- (b) give the chief executive of the department a  
report about the review that includes any  
recommendations and directions about how  
any defects in the procedural aspects are to  
be rectified. 6  
7  
8  
9  
10
- (5) The department chief executive must comply with  
a direction given in a report under subsection  
(4)(b) to the extent possible, unless— 11  
12  
13
- (a) before the report is given to the chief  
executive, a decision is made for the matter  
the subject of the direction; and 14  
15  
16
- (b) the employee has a right to appeal against  
the decision under chapter 7, part 1. 17  
18
- (6) A function of the commission under this section  
must be performed— 19  
20
- (a) by the commission chief executive; or 21
- (b) for the commission chief executive by a staff  
member of the commission to whom the  
function is delegated under section 62(1); or 22  
23  
24
- (c) if the function is the giving of a report under  
subsection (4)(b) that does not include a  
direction by the commission—any other  
appropriately qualified entity to whom the  
function of giving the report is delegated  
under section 62(2). 25  
26  
27  
28  
29  
30
- (7) In this section— 31
- current work performance matter*** means— 32
- (a) a work performance matter being handled  
by the department at the time the request is 33  
34

[s 29]

---

	made by an employee under subsection (2);	1
	but	2
	(b) does not include a work performance matter	3
	if the personal conduct the subject of the	4
	matter would, if proved, constitute corrupt	5
	conduct under the <i>Crime and Corruption</i>	6
	<i>Act 2001</i> , section 15.	7
	<i>procedural aspect</i> , of a current work performance	8
	matter, means an aspect of the matter relating to	9
	compliance with—	10
	(a) a procedure under a directive applying to the	11
	matter; or	12
	(b) principles of natural justice.	13
	<i>suspension or discipline directive</i> means a	14
	directive made under section 137A or 192A.	15
<b>Clause 29</b>	<b>Insertion of new ch 3, pt 7</b>	16
	Chapter 3—	17
	<i>insert—</i>	18
	<b>Part 7</b>	19
	<b>Administrative</b>	20
	<b>inquiries</b>	20
	<b>880 Minister may ask for administrative inquiry</b>	21
	(1) The Minister may, by signed notice, ask the	22
	special commissioner, commission chief	23
	executive or another appropriately qualified	24
	person to conduct an inquiry (an <i>administrative</i>	25
	<i>inquiry</i> ) into—	26
	(a) the functions or activities of 1 or more	27
	public service offices, including in relation	28
	to—	29
	(i) the administration of a particular	30
	scheme or program; or	31

- 
- (ii) the effectiveness and efficiency of public service office interactions; or
    - (b) an area of existing or proposed government policy; or
    - (c) another other area of public administration relating to a main purpose of this Act.
  - (2) However, the Minister can not ask for an administrative inquiry about an individual employee.
  - (3) Before making the request, the Minister must—
    - (a) inform the departmental Minister and the chief executive or the head of the public service office about the proposed administrative inquiry; and
    - (b) give the chief executive or the head of the public service office an opportunity to nominate a stated number of employees of the public service office to take part in the administrative inquiry.
  - (4) The notice under subsection (1) must state the terms of reference for the administrative inquiry.

**88P Powers for conducting administrative inquiry**

- (1) For conducting an administrative inquiry, the special commissioner, commission chief executive or appropriately qualified person may do any of the following—
  - (a) enter official premises of a public service office at a reasonable time;
  - (b) require the production of, examine, copy, or take an extract from, any official document in the possession of the public service office;

[s 29]

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- (c) interview employees of the public service office; 1  
2
- (d) interview anyone else who can provide information relevant to the inquiry. 3  
4
- (2) The chief executive or the head of the public service office and each other person employed in the office must provide the assistance reasonably required by the special commissioner, commission chief executive or appropriately qualified person for conducting the inquiry. 5  
6  
7  
8  
9  
10
- (3) However, a person need not answer a question asked by, or give information to, the special commissioner, commission chief executive or appropriately qualified person if answering the question or giving the information might tend to incriminate the individual or expose the individual to a penalty. 11  
12  
13  
14  
15  
16  
17
- (4) In this section— 18
- official document*, in the possession of a public service office, includes an official document— 19  
20
- (a) under the control of the office, or that the office is entitled to access, whether or not created in the public service office; and 21  
22  
23
- (b) in the possession, or under the control, of a person employed in the public service office in the person’s official capacity. 24  
25  
26
- 88Q Report on administrative inquiry** 27
- (1) As soon as practicable after completing an administrative inquiry, the special commissioner, commission chief executive or appropriately qualified person must give the Minister a report on the inquiry, including any findings or recommendations. 28  
29  
30  
31  
32  
33
- (2) The Minister— 34



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(a)	must give a copy of the report to the departmental Minister, the chief executive or head and anyone else the Minister considers appropriate; and	1 2 3 4
(b)	may publish the report in the way the Minister considers appropriate.	5 6
(3)	However, the Minister must remove any confidential information or personal information from the report before it is published under subsection (2)(b).	7 8 9 10
(4)	In this section—	11
	<i>confidential information</i> —	12
(a)	means personal information; but	13
(b)	does not include information in the public domain unless further disclosure of the information is prohibited by law.	14 15 16
	<i>personal information</i> means information or an opinion about an individual—	17 18
(a)	if the individual’s identity is apparent, or can reasonably be ascertained, from the information or opinion; and	19 20 21
(b)	whether or not the information or opinion—	22
(i)	is true; or	23
(ii)	forms part of a database; or	24
(iii)	is recorded in a material form.	25
<b>Clause 30</b>	<b>Amendment of s 98 (Responsibilities)</b>	26
(1)	Section 98(1)—	27
	<i>insert</i> —	28
(ca)	planning human resources, including ensuring the employment in the department of persons on a fixed term temporary or	29 30 31

[s 31]

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	casual basis occurs only if there is a reason	1
	for the basis of employment under this Act;	2
(2)	Section 98(1)(ca) to (h)—	3
	<i>renumber</i> as section 98(1)(d) to (i).	4
<b>Clause 31</b>	<b>Replacement of s 100 (Extent of chief executive's autonomy)</b>	5
	Section 100—	6
	<i>omit, insert</i> —	7
	<b>100 Extent of chief executive's autonomy</b>	8
(1)	A chief executive is subject to the directions of the	9
	departmental Minister in managing the	10
	department, other than to the extent—	11
(a)	the chief executive is making decisions	12
	about particular individuals; or	13
(b)	another Act—	14
(i)	provides that the chief executive is not	15
	subject to the directions of the	16
	departmental Minister about particular	17
	matters; or	18
(ii)	limits the extent to which, or	19
	circumstances in which, the chief	20
	executive is subject to directions of the	21
	departmental Minister.	22
(2)	In making decisions about particular individuals,	23
	the chief executive—	24
(a)	is subject to any direction given by the	25
	commission in a report about a procedural	26
	aspect of a current work performance matter	27
	under section 88IA; and	28
(b)	must otherwise act independently,	29
	impartially and fairly; and	30
(c)	is not subject to direction by a Minister.	31
		32

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<b>Clause 32</b>	<b>Amendment of s 127 (Requirement about citizenship etc.)</b>	1
(1)	Section 127(1)(b)—	2
	<i>omit, insert—</i>	3
	(b) resides in Australia and has permission, under a Commonwealth law, to work in Australia.	4 5 6
(2)	Section 127—	7
	<i>insert—</i>	8
	(3) If a person’s permission to work in Australia ends, the person’s employment is taken to have been terminated by the chief executive on the same day.	9 10 11 12
<b>Clause 33</b>	<b>Amendment of s 130 (Request for reappointment)</b>	13
(1)	Section 130, heading—	14
	<i>omit, insert—</i>	15
	<b>130 Right of reappointment</b>	16
(2)	Section 130(2) to (4)—	17
	<i>omit, insert—</i>	18
	(2) The person is entitled to be—	19
	(a) reappointed to the former office; or	20
	(b) appointed to another service with the State, whether of the same classification level or a lower classification level as the former office.	21 22 23 24
	(3) However, the reappointment or appointment—	25
	(a) may only be made if the person resigned within 6 months before the day the period for nomination of candidates in the election ended; and	26 27 28 29

[s 34]

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	(b) must be made within 3 months after the return of the writ for the election.	1 2
	(4) The re-appointment or appointment may be made despite the person's age.	3 4
	(5) Despite this Act or another Act, the merit provisions do not apply for the reappointment or appointment.	5 6 7
	(6) In this section— <i>classification</i> includes rank or grade. <i>merit provisions</i> means—	8 9 10
	(a) generally—chapter 1, part 4; or	11
	(b) if the former officer of the person was as a police officer—the <i>Police Service Administration Act 1990</i> , section 5.2.	12 13 14
<b>Clause 34</b>	<b>Omission of s 131 (Dealing with request)</b>	15
	Section 131— <i>omit.</i>	16 17
<b>Clause 35</b>	<b>Amendment of s 132 (Continuity of service)</b>	18
	Section 132(1), 'section 131'— <i>omit, insert—</i> section 130	19 20 21
<b>Clause 36</b>	<b>Replacement of s 137 (Suspension other than as disciplinary action)</b>	22 23
	Section 137— <i>omit, insert—</i> <b>137 Suspension</b>	24 25 26
	(1) The chief executive of a department may, by	27

- 
- notice, suspend a person from duty if the chief executive reasonably believes—
- (a) for a public service officer—the proper and efficient management of the department might be prejudiced if the officer is not suspended; or
  - (b) for a public service employee—the employee is liable to discipline under a disciplinary law.
- (2) The notice must state—
- (a) when the suspension starts and ends; and
  - (b) whether the person is entitled to remuneration for the period of the suspension; and
  - (c) the effect that alternative employment may, under subsection (5), have on any entitlement to remuneration.
- (3) However, before suspending the person, the chief executive must consider all reasonable alternatives, including alternative duties, a temporary transfer or another alternative working arrangement, that are available to the person.
- (4) A public service employee is entitled to normal remuneration during a suspension, unless—
- (a) the person is suspended under subsection (1)(b); and
  - (b) the chief executive considers it is not appropriate for the employee to be entitled to normal remuneration during the suspension, having regard to the nature of the discipline to which the chief executive believes the person is liable.
- (5) If the person is entitled to normal remuneration during the suspension, any amount earned by the person from alternative employment the person

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- engages in during the period of the suspension 1  
must be deducted from person's normal 2  
remuneration, unless— 3
- (a) the person was engaged in the employment 4  
at the time of the suspension; and 5
- (b) the person, in engaging in the employment, 6  
was not contravening— 7
- (i) this Act; or 8
- (ii) a standard of conduct applying to the 9  
person under an approved code of 10  
conduct or standard of practice under 11  
the *Public Sector Ethics Act 1994*. 12
- (6) The deduction under subsection (5) must not be 13  
more than the amount of the person's normal 14  
remuneration during the period of the suspension. 15
- (7) The continuity of the person's service as a public 16  
service employee is taken not to have been broken 17  
only because of the suspension. 18
- (8) The chief executive may cancel the suspension at 19  
any time. 20
- (9) In suspending a public service employee under 21  
this section, the chief executive must comply 22  
with— 23
- (a) the principles of natural justice; and 24
- (b) this Act; and 25
- (c) the directive made under section 137A. 26
- (10) However, natural justice is not required if the 27  
person is entitled to normal remuneration during 28  
the suspension. 29
- 137A Commission chief executive must make 30  
directive about procedure for suspension 31**
- (1) The commission chief executive must make a 32

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	directive about procedures relating to suspension from duty under section 137.	1 2
(2)	The directive must make provision for the following—	3 4
(a)	the periodic review by departmental officers or the commission chief executive of suspensions being considered or undertaken by a department’s chief executive, including the period within which reviews must be conducted to ensure the timely resolution of suspension matters;	5 6 7 8 9 10 11
(b)	how natural justice requirements may be met in relation to decisions about suspensions including requirements about providing reasons for decisions about suspensions;	12 13 14 15 16
(c)	the circumstances in which a chief executive may, under section 137(4), decide a public service employee is not entitled to normal remuneration during a suspension of the employee.	17 18 19 20 21
(3)	The directive may make provision for the circumstances, and the way, in which a person may be reimbursed for any remuneration the person does not receive during the person’s suspension after a determination is made about whether or not the employee is liable for discipline.	22 23 24 25 26 27 28
<b>Clause 37</b>	<b>Replacement of ch 5, pt 5 (General and temporary employees)</b>	29 30
	Chapter 5, part 5—	31
	<i>omit, insert—</i>	32

[s 37]

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<b>Part 5</b>	<b>General, fixed term temporary and casual employees</b>	1 2 3
<b>147</b>	<b>Employment of general employees</b>	4
(1)	A chief executive may employ a person as a general employee to perform work of a type not ordinarily performed by a public service officer.	5 6 7
(2)	The employment may be—	8
(a)	on tenure or a temporary basis for a fixed term and full-time or part-time; or	9 10
(b)	on a casual basis.	11
(3)	A person employed under this section does not, only because of the employment, become a public service officer.	12 13 14
(4)	Subsections (1) and (2) are subject to a directive about general employees.	15 16
<b>148</b>	<b>Employment of fixed term temporary employees</b>	17 18
(1)	A chief executive may employ a person (a <i>fixed term temporary employee</i> ) for a fixed term to perform work of a type ordinarily performed by a public service officer, other than a chief executive or senior executive officer, if employment of a person on tenure is not viable or appropriate, having regard to human resource planning carried out by the chief executive under section 98(1)(d).	19 20 21 22 23 24 25 26
(2)	Without limiting subsection (1), employment of a person on tenure may not be viable or appropriate if the employment is for any of the following purposes—	27 28 29 30



- 
- (a) to fill a temporary vacancy arising because a person is absent for a known period; 1  
2  
*Examples of absences for a known period—* 3  
approved leave (including parental leave), a 4  
secondment 5
- (b) to perform work for a particular project or purpose that has a known end date; 6  
7  
*Examples—* 8  
employment for a set period as part of a training 9  
program or placement program 10
- (c) to fill a position for which funding is uncertain or unknown; 11  
12  
*Examples—* 13  
employment relating to performing work for a 14  
particular project or in relation to an unplanned 15  
priority 16
- (d) to fill a short-term vacancy before a person is appointed on tenure; 17  
18
- (e) to perform work necessary to meet an unexpected short-term increase in workload. 19  
20  
*Example—* 21  
an unexpected increase in workload for disaster 22  
management and recovery 23
- (3) Also, without limiting subsection (1), employment on tenure may be viable or appropriate if a person is required to be employed for a purpose mentioned in subsection (2) on a frequent or regular basis. 24  
25  
26  
27  
28  
*Example—* 29  
an ongoing requirement to backfill multiple absences 30  
because of approved leave (including parental leave) or 31  
secondments 32
- (4) The employment may be full-time or part-time. 33
- (5) A person employed under this section does not, only because of the employment, become a public 34  
35

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- service officer. 1
- (6) The commission chief executive may make a 2  
directive about employing fixed term temporary 3  
employees under this section. 4
- 148A Employment of casual employees 5**
- (1) A chief executive may employ a person on a 6  
casual basis to perform work of a type ordinarily 7  
performed by a public service officer, other than a 8  
chief executive or senior executive, if 9  
employment of a person on tenure or as a fixed 10  
term temporary employee is not viable or 11  
appropriate. 12
- (2) A person employed under this section does not, 13  
only because of the employment, become a public 14  
service officer. 15
- (3) The commission chief executive must make a 16  
directive about the employment of casual 17  
employees employed under this section or section 18  
147, including the circumstances in which 19  
employment of a person on tenure or as a fixed 20  
term temporary employee is not viable or 21  
appropriate. 22
- 149 Fixed term temporary employees and casual 23  
employees may ask for review of status after 1 24  
year of continuous employment 25**
- (1) This section applies to a person who is a fixed 26  
term temporary employee or casual employee, if 27  
the person has been continuously employed in the 28  
same department for 1 year or more. 29
- (2) However, this section does not apply to a 30  
non-industrial instrument employee. 31
- (3) The person may ask the department's chief 32  
executive to decide whether to— 33

- 
- (a) continue the person's employment according to the terms of the person's existing employment; or
- (b) offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer.
- (4) A person can not make more than 1 request under subsection (3) in a 12-month period.
- (5) In this section—  
*fixed term temporary employee* includes a general employee employed under section 147 on a temporary basis for a fixed term.

#### **149A Decision on review of status**

- (1) The department's chief executive must decide a request made under section 149 within 28 days after receiving it.
- (2) The department's chief executive may offer to convert the person's employment under section 149(3)(b) only if—
- (a) the department's chief executive considers—
- (i) there is a continuing need for someone to be employed in the person's role, or a role that is substantially the same as the person's role; and
- (ii) the person is eligible for appointment having regard to the merit principle; and
- (b) any requirements of an industrial instrument are complied with in relation to the decision.
- (3) If the matters in subsection (2) are satisfied, the department's chief executive must decide to offer to convert the person's employment basis to

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- employment as a general employee on tenure or a public service officer, unless it is not viable or appropriate to do so having regard to—
- (a) for a fixed term temporary employee under section 149—the matters mentioned in section 148(1) to (3); and
  - (b) for a casual employee—the matters stated in a directive under section 148A(3); and
  - (c) the genuine operational requirements of the department.
- (4) If the department’s chief executive decides not to offer to convert the person’s employment under subsection (3)(b), the chief executive must give the person a notice stating—
- (a) the reasons for the decision; and
  - (b) the total period for which the person has been continuously employed in the department; and
  - (c) for a fixed term temporary employee—how many times the person’s employment as a fixed term temporary employee has been extended.
- (5) If the department’s chief executive does not make the decision within the period required under subsection (1), the chief executive is taken to have decided not to offer to convert the person’s employment and to continue the person’s employment as a fixed term temporary employee or casual employee according to the terms of the employee’s existing employment.
- (6) The commission chief executive may make a directive about making a decision under this section.

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<b>149B Review of status after 2 years continuous employment</b>	1 2
(1) This section applies in relation to a person who is a fixed term temporary employee or casual employee if the person has been continuously employed in the same department for 2 years or more.	3 4 5 6 7
(2) However, this section does not apply to a non-industrial instrument employee.	8 9
(3) The department's chief executive must decide whether to—	10 11
(a) continue the person's employment according to the terms of the person's existing employment; or	12 13 14
(b) offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer.	15 16 17
(4) The department's chief executive must make the decision within the required period after—	18 19
(a) the end of 2 years after the employee has been continuously employed as a fixed term temporary employee or casual employee in the department; and	20 21 22 23
(b) each 1-year period after the end of the period mentioned in paragraph (a) during which the employee is continuously employed as a fixed term temporary employee or casual employee in the department.	24 25 26 27 28 29
(5) Section 149A(2) and (3) applies to the department's chief executive in making the decision mentioned in subsection (3).	30 31 32
(6) If the department's chief executive decides not to offer to convert the person's employment under subsection (3), the chief executive must give the	33 34 35

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- employee a notice stating— 1
- (a) the reasons for the decision; and 2
  - (b) the total period for which the person has 3  
been continuously employed in the 4  
department; and 5
  - (c) for a fixed term temporary employee—how 6  
many times the person’s employment as a 7  
fixed term temporary employee or casual 8  
employee has been extended. 9
- (7) If the department’s chief executive does not make 10  
the decision within the required period, the chief 11  
executive is taken to have decided not to offer to 12  
convert the person’s employment and to continue 13  
the person’s employment as a fixed term 14  
temporary employee or casual employee 15  
according to the terms of the employee’s existing 16  
employment. 17
- (8) The commission chief executive must make a 18  
directive about making a decision under this 19  
section. 20
- (9) In this section— 21
- fixed term temporary employee* includes a 22  
general employee employed under section 147 on 23  
a temporary basis for a fixed term. 24
- required period*, for making a decision under 25  
subsection (3), means— 26
- (a) the period stated in an industrial instrument 27  
within which the decision must be made; or 28
  - (b) if paragraph (a) does not apply—28 days 29  
after the end of the period mentioned in 30  
subsection (4)(a) or (b). 31

- 
- 149C Appointing public service employee acting in position at higher classification level** 1  
2
- (1) This section applies in relation to a public service 3  
employee if the employee— 4
- (a) is seconded to, under section 120(1)(a), or is 5  
acting at, a higher classification level in the 6  
department in which the employee holds an 7  
appointment or is employed; and 8
- (b) has been seconded to or acting at the higher 9  
classification level for a continuous period 10  
of at least 1 year; and 11
- (c) has been assessed as appropriately qualified 12  
for employment at the higher classification 13  
level according to a selection process carried 14  
out under a directive mentioned in section 15  
29 or another relevant directive. 16
- (2) However, this section does not apply to the 17  
following public services employees— 18
- (a) a casual employee; 19
- (b) a non-industrial instrument employee; 20
- (c) an employee who is seconded to or acting in 21  
a position that is ordinarily held by a 22  
non-industrial instrument employee. 23
- (3) The employee may ask the department’s chief 24  
executive to appoint the employee to the position 25  
at the higher classification level as a general 26  
employee on tenure or a public service officer, 27  
after— 28
- (a) the end of 1 year of being seconded to or 29  
acting at the higher classification level; and 30
- (b) each 1-year period after the end of the 31  
period mentioned in paragraph (a). 32
- (4) The department’s chief executive must decide the 33  
request within the required period. 34

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- (5) If the department's chief executive decides to refuse the request, the chief executive must give the employee a notice stating—
- (a) reasons for the decision; and
  - (b) the total continuous period for which the person has been acting at the higher classification level in the department; and
  - (c) how many times the person's engagement at the higher classification level has been extended.
- (6) If the department's chief executive does not make the decision within the required period, the chief executive is taken to have refused the request.
- (7) The commission chief executive must make a directive about appointing an employee to a position at a higher classification level under this section.
- (8) In this section—
- continuous period*, in relation to an employee acting at a higher classification level, has the meaning given for the employee under a directive made under subsection (7).
- required period*, for making a decision under subsection (4), means—
- (a) the period stated in an industrial instrument within which the decision must be made; or
  - (b) if paragraph (a) does not apply—28 days after the request is made.
- Clause 38**      **Insertion of new s 186C**
- After section 186B—
- insert—*



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<b>186C Requirement to apply positive performance management principles before taking disciplinary action for performance</b>	1
	2
	3
A public service employee’s chief executive must not take disciplinary action against a public service employee for a matter relating to the employee’s performance until the chief executive has complied with a directive under section 25A(3) about applying the positive performance management principles in relation to the matter.	4
	5
	6
	7
	8
	9
	10

<b>Clause 39 Amendment of s 187 (Grounds for discipline)</b>	11
(1) Section 187(1)(a)—	12
<i>omit, insert—</i>	13
(a) engaged in repeated unsatisfactory performance or serious under performance of the employee’s duties, including, for example, by performing duties carelessly, incompetently or inefficiently; or	14
	15
	16
	17
	18
(2) Section 187(1)(f)—	19
<i>omit, insert—</i>	20
(f) contravened, without reasonable excuse, a provision of this Act; or	21
	22
(g) contravened, without reasonable excuse, a relevant standard of conduct in a way that is sufficiently serious to warrant disciplinary action.	23
	24
	25
	26
(3) Section 187(4)—	27
<i>insert—</i>	28
<b><i>relevant standard of conduct</i></b> , for a public service employee, means—	29
	30
(a) a standard of conduct applying to the employee under an approved code of	31
	32

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	conduct under the <i>Public Sector Ethics Act 1994</i> ; or	1 2
	(b) a standard of conduct, if any, applying to the employee under an approved standard of practice under the <i>Public Sector Ethics Act 1994</i> .	3 4 5 6
<b>Clause 40</b>	<b>Omission of s 189 (Suspension of public service employee liable to discipline)</b>	7 8
	Section 189—	9
	<i>omit.</i>	10
<b>Clause 41</b>	<b>Amendment of s 190 (Procedure for disciplinary action)</b>	11
	(1) Section 190(1), ‘or suspending a public service employee’—	12
	<i>omit.</i>	13
	(2) Section 190(2)—	14
	<i>omit.</i>	15
<b>Clause 42</b>	<b>Omission of s 191 (Effect of suspension from duty)</b>	16
	Section 191—	17
	<i>omit.</i>	18
<b>Clause 43</b>	<b>Amendment of s 192 (Additional procedures for suspension or termination)</b>	19 20
	(1) Section 192, heading and subsection (1), ‘suspension or’—	21
	<i>omit.</i>	22
	(2) Section 192(1), ‘suspend or’—	23
	<i>omit.</i>	24
	(3) Section 192(2)—	25
	<i>omit, insert—</i>	26

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	(2) The notice must state the day the termination takes effect.	1 2
<b>Clause 44</b>	<b>Insertion of new s 192A</b>	3
	After section 192—	4
	<i>insert—</i>	5
	<b>192A Commission chief executive must make directives about disciplinary action and investigating grounds for discipline and grievances</b>	6 7 8 9
	(1) The commission chief executive must make a directive about each of the following matters—	10 11
	(a) managing disciplinary action under this chapter;	12 13
	(b) procedures for investigating the substance of a grievance or allegation relating to a public service employee’s work performance or personal conduct.	14 15 16 17
	(2) A directive under subsection (1) must make provision for—	18 19
	(a) the periodic review by departmental officers or the commission chief executive of disciplinary action being considered or undertaken by a department’s chief executive, including the period within which reviews must be conducted to ensure the timely resolution of disciplinary matters; and	20 21 22 23 24 25 26 27
	(b) how natural justice requirements may be met in relation to taking disciplinary action including requirements about providing reasons for decisions about taking disciplinary action; and	28 29 30 31 32
	(c) the circumstances in which a contravention of a relevant standard of conduct under	33 34

[s 45]

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	section 187(1)(g) is likely to be considered sufficiently serious to warrant disciplinary action.	1 2 3
<b>Clause 45</b>	<b>Amendment of s 193 (Appeals)</b>	4
	Section 193, note—	5
	<i>omit.</i>	6
<b>Clause 46</b>	<b>Amendment of s 194 (Decisions against which appeals may be made)</b>	7 8
	(1) Section 194(1)—	9
	<i>insert—</i>	10
	(ba) a decision of the commission chief executive under section 88IA to give a direction about rectifying a defect in the procedural aspects of the handling of a work performance matter, to the extent the direction affects the employee the subject of the work performance matter;	11 12 13 14 15 16 17
	(bb) a decision to suspend a public service employee without entitlement to normal remuneration under section 137 (a <i>suspension without pay decision</i> );	18 19 20 21
	(2) Section 194(1)(e) and (ea)—	22
	<i>omit, insert—</i>	23
	(e) a decision under section 149B not to convert the basis of employment of a fixed term temporary employee or casual employee (a <i>conversion decision</i> );	24 25 26 27
<b>Clause 47</b>	<b>Amendment of s 195 (Decisions against which appeals can not be made)</b>	28 29
	(1) Section 195(1)(h)—	30

---

*omit, insert—*

- |  |                                 |
|--|---------------------------------|
|  | 1                               |
| (h) a decision of the commission chief executive relating to reviewing a procedural aspect of the handling by a department of a work performance matter at the request of an employee under section 88IA, other than to the extent allowed under section 194(1)(ba); | 2<br>3<br>4<br>5<br>6<br>7<br>8 |
| (i) a decision under section 149 not to convert the employment basis of a fixed term temporary employee or casual employee;  | 9<br>10<br>11                   |
| (j) a decision under section 149C not to appoint an employee to a position at a higher classification level;   | 12<br>13<br>14                  |
| (k) a non-appealable appointment.  | 15                              |
| (2) Section 195(3A)(b)—  | 16                              |
| <i>omit, insert—</i>   | 17                              |
| (b) made under chapter 6, part 2, other than a finding under section 187 that a disciplinary ground exists for the person; or  | 18<br>19<br>20                  |
| (3) Section 195(4) and (4A)—   | 21                              |
| <i>omit.</i>   | 22                              |

**Clause 48      Amendment of s 196 (Who may appeal)** 23

- |  |                |
|--|----------------|
| (1) Section 196—   | 24             |
| <i>insert—</i>   | 25             |
| (ba) for a decision mentioned in section 194(1)(ba)—the employee the subject of the work performance matter; | 26<br>27<br>28 |
| (bb) for a suspension without pay decision—the public service employee the subject of the decision;          | 29<br>30<br>31 |
| (2) Section 196(e) and (ea)—   | 32             |

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*omit, insert—* 1  
(e) for a conversion decision—the employee the 2  
subject of the decision; 3

**Clause 49 Replacement of ch 7, pt 1, divs 1A to 3** 4

Chapter 7, part 1, divisions 1A to 3— 5

*omit, insert—* 6

**Division 2 Appeals** 7

**197 Appeal to IRC** 8

An appeal under this part is to be heard and 9  
decided under the *Industrial Relations Act 2016*, 10  
chapter 11 by the IRC. 11

**Clause 50 Omission of ch 7, pt 1, div 4, hdg (Miscellaneous provisions)** 12  
13

Chapter 7, part 1, division 4, heading— 14

*omit.* 15

**Clause 51 Amendment of s 211 (Attendance at an appeal is part of an employee's duties)** 16  
17

Section 211(b), 'an IRC member'— 18

*omit, insert—* 19

the IRC 20

**Clause 52 Amendment of s 213 (Entitlement of non-public service employees)** 21  
22

Section 213(1), 'an IRC member'— 23

*omit, insert—* 24

the IRC 25

---

<b>Clause 53</b>	<b>Amendment of s 214 (Relevant department's or public service office's financial obligation for appeal)</b>	1 2
	Section 214(1)(a), 'IRC member's'—	3
	<i>omit, insert—</i>	4
	IRC's	5
<b>Clause 54</b>	<b>Amendment of s 214B (Commission chief executive must make directive for this part)</b>	6 7
	Section 214B(2)(a)(iii) and (3), 'an IRC member'—	8
	<i>omit, insert—</i>	9
	the IRC	10
<b>Clause 55</b>	<b>Omission of ch 7, pt 2 (Alternate jurisdiction)</b>	11
	Chapter 7, part 2—	12
	<i>omit.</i>	13
<b>Clause 56</b>	<b>Amendment of s 218A (Commission chief executive must make directive about dealing with complaints by officers and employees)</b>	14 15 16
	(1) Section 218A, heading, 'complaints by officers and employees'—	17 18
	<i>omit, insert—</i>	19
	<b>individual employee grievances</b>	20
	(2) Section 218A(1), from 'a directive' to 'complaints made by'—	21 22
	<i>omit, insert—</i>	23
	a directive (the <i>individual employee grievances directive</i> ) about how departments must deal with grievances of	24 25 26
	(3) Section 218A(2), 'complaints'—	27
	<i>omit, insert—</i>	28

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	grievances	1	
(4)	Section 218A(2), ‘complaint’—	2	
	<i>omit, insert—</i>	3	
	grievance	4	
<b>Clause 57</b>	<b>Omission of ss 218B and 218C</b>	5	
	Sections 218B and 218C—	6	
	<i>omit.</i>	7	
<b>Clause 58</b>	<b>Insertion of new ch 9, pt 14</b>	8	
	Chapter 9—	9	
	<i>insert—</i>	10	
	<b>Part 14</b>	<b>Transitional provisions</b>	11
		<b>for Public Service and</b>	12
		<b>Other Legislation</b>	13
		<b>Amendment Act 2020</b>	14
	<b>292 References to temporary employees</b>	15	
	On the commencement, if the context permits, a reference in a document—	16	
		17	
	(a) to a temporary employee under the Act as in force before the commencement includes a reference to a fixed term temporary employee; and	18	
		19	
		20	
		21	
	(b) to a fixed term temporary employee includes a reference to a temporary employee under the Act as in force before the commencement.	22	
		23	
		24	
		25	



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<b>293 Application of s 149 for existing temporary employees</b>	1 2
(1) This section applies if—	3
(a) immediately before the commencement, a person was employed as a temporary employee in a department; and	4 5 6
(b) the person—	7
(i) has, on the commencement, been continuously employed as a temporary employee for a period of at least 1 but not more than 2 years under previous section 149; or	8 9 10 11 12
(ii) within 3 months after the commencement, would have been continuously employed as a temporary employee for a period of at least 1 year under previous section 149 if the amending Act had not commenced.	13 14 15 16 17 18
(2) The person may ask the department’s chief executive for a decision under section 149(3) within—	19 20 21
(a) 3 months after the commencement; or	22
(b) if a longer period for a particular class of employees of which the person is a member is agreed between the department’s chief executive and an employee organisation for the class of employee, and approved by the commission chief executive—the longer period.	23 24 25 26 27 28 29
(3) For applying section 149 to the person—	30
(a) a reference in section 149 to a fixed term temporary employee is taken to include a reference to the person; and	31 32 33
(b) the period for which the person was continuously employed as a temporary	34 35

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employee under previous section 149 is to	1
be taken into account for working out the	2
period for which the person has been	3
continuously employed in the department.	4
(4) The department’s chief executive must decide the	5
request within 28 days after the period mentioned	6
in subsection (2)(a) or (b) ends.	7
(5) In this section—	8
<i>amending Act</i> means the <i>Public Service and</i>	9
<i>Other Legislation Amendment Act 2020</i> .	10
<i>employee organisation</i> see the <i>Industrial</i>	11
<i>Relations Act 2016</i> , schedule 5.	12
<i>previous section 149</i> means section 149 as in	13
force immediately before the commencement.	14
<b>294 Continuation of previous section 149 for</b>	15
<b>particular temporary employees</b>	16
(1) This section applies if—	17
(a) a temporary employee was, under section	18
149 as in force immediately before the	19
commencement, entitled to a decision by the	20
chief executive; and	21
(b) on the commencement, the decision has not	22
been made.	23
(2) Section 149, as in force immediately before the	24
commencement, continues to apply in relation to	25
the employee.	26
<b>295 Application of s 149C for public service</b>	27
<b>employees acting at higher classification</b>	28
<b>levels</b>	29
(1) This section applies if—	30
(a) immediately before the commencement, a	31
person was seconded to, under section	32

- 
- 120(1)(a), or acting at, a higher classification level in a department; and
- (b) the person has, on the commencement or within 3 months after the commencement, been seconded to or acting at the higher classification level for a continuous period of at least 1 year.
- (2) The person may ask the department's chief executive to appoint the person to a position at a higher classification level under section 149C(3) within—
- (a) 3 months after the commencement; or
- (b) if a longer period for a particular class of employees of which the person is a member is agreed between the department's chief executive and an employee organisation for the class of employee, and approved by the commission chief executive—the longer period.
- (3) For applying section 149C, the period for which the person has been continuously acting at the higher classification level before the commencement is to be taken into account for working out how long the person has been acting at that level for a continuous period for section 149C(1)(b).

**296 Application of s 187 for existing disciplinary processes**

- (1) This section applies if—
- (a) before the commencement, the chief executive had decided to start, or had started, a disciplinary process for a ground under section 187(1)(a) or (f)(ii) or (iii) as in force immediately before the commencement; and

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- (b) on the commencement, the disciplinary process—
- (i) has not started; or
  - (ii) has started but a disciplinary finding for the ground has not been made.
- (2) If, on the commencement, the circumstances to which the disciplinary process relates constitute a ground for discipline under section 187(1)(a), (f) or (g), the disciplinary process may be started or continued in relation to the employee.
- (3) If, on the commencement, the circumstances to which the disciplinary process relates do not constitute a ground for discipline under section 187(1)(a), (f) or (g), the chief executive must not start or continue the disciplinary process in relation to the employee.
- (4) If subsection (3) applies, the chief executive must ensure any decision relating to the disciplinary process is not recorded in any document kept in relation to the employee or the employee’s work performance.
- (5) In this section—
- disciplinary process* means a step or action for investigating whether or not a disciplinary ground exists in relation to an employee.
- 297 Appeals not started before commencement**
- (1) This section applies if—
- (a) before the commencement, a person could have started an appeal against a decision under chapter 7, part 1; and
  - (b) on the commencement, the person has not started the appeal; and

- 
- (c) the time within which the appeal notice for the decision must be given and received under section 197 (the *appeal period*) has not ended. 1  
2  
3  
4
- (2) The person may appeal the decision within the appeal period. 5  
6
- (3) Chapter 7, as in force immediately before the commencement, applies in relation to the appeal as if the *Public Service and Other Legislation Amendment Act 2020* had not commenced. 7  
8  
9  
10
- 298 Appeals started before commencement** 11
- (1) This section applies if— 12
- (a) before the commencement, an appeal was started under chapter 7, part 1; and 13  
14
- (b) on the commencement, the appeal has not been decided or withdrawn. 15  
16
- (2) The appeal must be heard and decided under chapter 7 as in force immediately before the commencement, as if the *Public Service and Other Legislation Amendment Act 2020* had not commenced. 17  
18  
19  
20  
21
- 299 Continuation of IRC members for particular appeals** 22  
23
- Despite the commencement of the *Public Service and Other Legislation Amendment Act 2020*, chapter 3, part 5 as in force immediately before the commencement continues to apply for hearing and deciding an appeal mentioned in section 297 or 298. 24  
25  
26  
27  
28  
29

[s 59]

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**300 Application of directive under s 214B to  
commission**

In the directive made under section 214B as in  
force immediately before the commencement, a  
reference to an IRC member is taken to include a  
reference to the IRC.

**Clause 59 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, definitions *casual employment decision*,  
*employee complaints directive*, *IRC member*, *senior appeals*  
*officer*, *senior IRC member*, *temporary employee*, *temporary*  
*employment decision*—

*omit.*

(2) Schedule 4—

*insert*—

*administrative inquiry* see section 88O(1).

*casual employee* means—

(a) a person employed under section 147 on a  
casual basis; or

(b) a person employed under section 148A.

*continuously employed*, in relation to an  
employee mentioned in section 149 or 149B has  
the meaning given for the employee under a  
directive made under each of those sections.

*conversion decision* see section 194(1)(e).

*fixed term temporary employee* see section  
148(1).

*non-industrial instrument employee* means a  
person who works as a public service employee  
other than under an industrial instrument.

*positive performance management principles*  
see section 25A.

*suspension without pay decision* see section 1  
194(1)(bb). 2

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