

I certify that this is a copy of the authorised version of this Act as at 1 December 2022, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 December 2022.

K Woodward
Deputy Chief Parliamentary Counsel
Dated 13 December 2022



TASMANIA

STATE SERVICE ACT 2000

No. 85 of 2000

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Act binds Crown
5. Application of Act

PART 2 – THE STATE SERVICE

6. Constitution of the State Service
7. State Service Principles
8. Heads of Agencies must promote State Service Principles
9. The State Service Code of Conduct
10. Breaches of Code of Conduct

PART 3 – ADMINISTRATIVE ARRANGEMENTS AND REORGANISATIONS

11. Establishment of Government departments and State authorities as Agencies
12. Amendment to Schedule 1
13. Administrative reorganisations

PART 4 – THE EMPLOYER

14. The Employer
15. Functions of Employer
16. Powers of Employer
17. Employment Directions
18. Investigations into administrative and management matters
19. Reports by Employer

PART 5 – HEAD OF THE STATE SERVICE

20. Head of the State Service
21. Delegation by Head of the State Service
- [22 - 28. *Repealed*]

PART 6 – HEADS OF AGENCIES, HOLDERS OF PRESCRIBED OFFICES AND SENIOR EXECUTIVES

29. Creation of certain offices of Head of Agency and senior executive
30. Heads of Agencies
31. Appointment, &c., of officers
- 31A. Appointments under other Acts
32. Termination of office of certain Heads of Agencies, holders of prescribed offices and senior executives
33. Transfer of certain Heads of Agencies and senior executives
34. Functions and powers of Heads of Agencies
35. Delegation
36. Annual reports by Heads of Agencies

PART 7 – STATE SERVICE EMPLOYEES

Division 1 – Appointment, promotion, transfer and termination

- 37. Appointment and promotion of employees
- 38. Terms and conditions of employment of employees
- 39. Procedure for appointments and promotions
- 40. Request by Head of Agency to promote permanent employee without advertising
- 41. Voluntary transfers between Agencies
- 42. Compulsory transfers between Agencies
- 43. Suspension
- 44. Termination of employment of officers and employees
- 45. Termination of employment of fixed-term employees

Division 2 – Secondment and redeployment

- 46. Arrangements relating to secondment of persons
- 47. Redeployment

Division 3 – Inability to perform duties

- 48. Inability of employees to perform duties

Division 4 – Review of actions

- 49. Interpretation of Division 4
- 50. Review of actions
- 50A. Relationship with Ombudsman and other persons
- 51. Determination of a review

PART 7A – MANAGING FOR PERFORMANCE

- 51A. Role and responsibility of Head of Agency in relation to managing for performance
- 51B. Role and responsibility of officers and employees in participating in, and managing for, performance
- 51C. Underperformance, &c., of officer or employee

PART 8 – MISCELLANEOUS

- 52. Public notification
- 53. Holidays

- 54. Fines
- 54A. Validation of certain leave balances and purported actions
- 55. Regulations
- 56. Administration of Act
- 57. Orders revoked
- 58. Acts repealed
- 59. Statutory Rules rescinded

SCHEDULE 1 – AGENCIES

SCHEDULE 2 – ACTS REPEALED

SCHEDULE 3 – STATUTORY RULES RESCINDED



STATE SERVICE ACT 2000

No. 85 of 2000

**An Act to provide for the establishment and management
of the State Service and for other purposes**

[Royal Assent 20 December 2000]

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *State Service Act 2000*.

2. Commencement

This Act commences on a day to be proclaimed.

State Service Act 2000
Act No. 85 of 2000

s. 3

Part 1 – Preliminary

3. Interpretation

(1) In this Act, unless the contrary intention appears –

Agency means a Government department or a State authority or other organisation specified in Column 1 of Schedule 1;

appropriate Minister, when used in relation to an Agency, means the Minister for the time being administering that Agency;

Auditor-General means the person holding the office of Auditor-General by virtue of section 9(1) of the *Audit Act 2008*;

award means an award, determination, decision, order or agreement in force under the *Workplace Relations Act 1996* of the Commonwealth, the *Industrial Relations Act 1984* or any other Act of the Commonwealth or of Tasmania which provides for the determination of conditions of employment of a person;

classification means assignment of a specified salary or salary level, or of a specified status, on a scale described in an award to duties in the State Service;

Code of Conduct means the conduct requirements specified in section 9;

complying superannuation scheme has the same meaning as in the *Public Sector Superannuation Reform Act 1999*;

State Service Act 2000
Act No. 85 of 2000

Part 1 – Preliminary

s. 3

employee means a permanent employee or a fixed-term employee, but does not include a person appointed to an office under section 25 or 31 or a person in respect of whom an arrangement under section 46(1)(a) is in force;

Employer means the Minister administering this Act;

Employment Directions means the directions issued by the Employer under section 17(1);

fixed-term employee means a person appointed for a specified term or for the duration of a specified task as referred to in section 37(3)(b);

functions includes duties;

Government department means a department established under section 11;

Head of Agency means the Head of an Agency referred to in section 30;

Head of the State Service means the person appointed and holding office under section 20;

officer means a person appointed as a Head of Agency, to a prescribed office or as a senior executive under section 31;

performance management plan means a professional development and

State Service Act 2000
Act No. 85 of 2000

s. 3

Part 1 – Preliminary

performance management plan prepared under section 34(1)(g);

permanent employee means a person appointed as a permanent employee as referred to in section 37(3)(a);

position means an allocation of duties in accordance with section 34(1)(c);

promotion means the assignment of duties to a permanent employee, other than for a specified period or for the duration of a specified task, which results in an employee obtaining a higher attainable maximum salary level than the salary level that the employee had immediately before the employee was assigned those duties;

regulations means regulations made and in force under this Act;

salary includes wages;

salary level means, if the salary is within a range of salary, the maximum salary in that range;

senior executive means a person appointed to an office created by the Premier under section 29(4);

State authority means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being

State Service Act 2000
Act No. 85 of 2000

Part 1 – Preliminary

s. 3

a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority, but does not include a Government department;

State Service means the State Service referred to in section 6;

State Service Principles means the Principles in section 7;

Tasmanian Industrial Commission means the Tasmanian Industrial Commission constituted under section 5 of the *Industrial Relations Act 1984*.

- (2) A note in the text of this Act does not form part of this Act.
- (3) In this Act –

this Act, except in section 17, includes Employment Directions.
- (4) A reference in this Act to employment, in relation to an employee, is a reference to employment in the State Service.
- (5) If there is an inconsistency between a provision of this Act and any other law in force in this State, other than an award, being a law that makes specific provision with respect to the appointment of a person to the State Service or the promotion of a permanent employee, an employee included in a class of employees or

State Service Act 2000
Act No. 85 of 2000

s. 4

Part 1 – Preliminary

any matter relating to the employment of an employee, the provision of that law is to be read subject to the provision of this Act.

4. Act binds Crown

This Act binds the Crown in right of Tasmania and, in so far as the legislative power of Parliament permits, in all its other capacities.

5. Application of Act

- (1) Subject to this section, this Act applies to and in relation to officers and employees.
- (2) This Act does not apply to or in relation to –
 - (a) a person who is remunerated by fees, allowances or commission only; or
 - (b) a person who is employed in an honorary capacity only; or
 - (c) a person in respect of whom an arrangement under section 46(1)(a) is in force.
- (3) The Governor may, by order, declare that any specified provision or provisions of this Act do not apply to –
 - (a) persons specified in the order; or
 - (b) a class of persons specified in the order; or
 - (c) Agencies specified in the order; or

State Service Act 2000
Act No. 85 of 2000

Part 1 – Preliminary

s. 5

(d) positions or a class of positions specified in the order –

being persons to whom or Agencies or positions to which that provision or those provisions would have applied but for the order.

- (4) An order made under subsection (3) may be expressed to be in force for a period specified in the order, in which case the order is to be in force for the period so specified and then cease to have effect.
- (5) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order made under subsection (3) as if the order were regulations.

PART 2 – THE STATE SERVICE

6. Constitution of the State Service

The State Service consists of Heads of Agencies, holders of prescribed offices, senior executives and employees.

7. State Service Principles

- (1) The State Service Principles are as follows:
 - (a) the State Service is apolitical, performing its functions in an impartial, ethical and professional manner;
 - (b) the State Service is a public service in which employment decisions are based on merit;
 - (c) the State Service provides a workplace that is free from discrimination and recognises and utilises the diversity of the community it serves;
 - (d) the State Service is accountable for its actions and performance, within the framework of Ministerial responsibility, to the Government, the Parliament and the community;
 - (e) the State Service is responsive to the Government in providing honest, comprehensive, accurate and timely

State Service Act 2000
Act No. 85 of 2000

Part 2 – The State Service

s. 7

-
- advice and in implementing the Government's policies and programs;
- (f) the State Service delivers services fairly and impartially to the community;
 - (g) the State Service develops leadership of the highest quality;
 - (h) the State Service establishes workplace practices that encourage communication, consultation, cooperation and input from employees on matters that affect their work and workplace;
 - (i) the State Service provides a fair, flexible, safe and rewarding workplace;
 - (j) the State Service plans for and promotes effective performance management in which Heads of Agencies, officers and employees are accountable for the performance of their functions and exercise of their powers;
 - (ja) there is an expectation that officers and employees –
 - (i) will perform to the standard and requirements identified in the performance management plan relating to the officer or employee; and
 - (ii) will be responsive to Government priorities; and

State Service Act 2000
Act No. 85 of 2000

s. 7

Part 2 – The State Service

- (iii) will deliver quality services;
 - (k) the State Service promotes equity in employment;
 - (l) the State Service provides a reasonable opportunity to members of the community to apply for State Service employment;
 - (m) the State Service provides a fair system of review of decisions taken in respect of employees.
- (2) For the purposes of subsection (1)(b), a decision relating to appointment or promotion is based on merit if –
- (a) an assessment is made of the relative suitability of the candidates for the duties; and
 - (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
 - (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
 - (d) the assessment is the primary consideration in making the decision.

8. Heads of Agencies must promote State Service Principles

A Head of Agency must uphold, promote and comply with the State Service Principles.

9. The State Service Code of Conduct

- (1) An employee must behave honestly and with integrity in the course of State Service employment.
- (2) An employee must act with care and diligence in the course of State Service employment.
- (3) An employee, when acting in the course of State Service employment, must treat everyone with respect and without harassment, victimisation or discrimination.
- (4) An employee, when acting in the course of State Service employment, must comply with all applicable Australian law.
- (5) For the purpose of subsection (4),

Australian law means –

- (a) any Act (including this Act) or any instrument made under an Act; or
- (b) any law of the Commonwealth or a State or Territory, including any instrument made under such a law.

State Service Act 2000
Act No. 85 of 2000

s. 9

Part 2 – The State Service

- (6) An employee must comply with any standing orders made under section 34(2) and with any lawful and reasonable direction given by a person having authority to give the direction.
- (7) An employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee's State Service employment.
- (8) An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.
- (9) An employee must use Tasmanian Government resources in a proper manner.
- (10) An employee must not knowingly provide false or misleading information in connection with the employee's State Service employment.
- (11) An employee must not make improper use of –
 - (a) information gained in the course of his or her employment; or
 - (b) the employee's duties, status, power or authority –in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.
- (12) An employee who receives a gift in the course of his or her employment or in relation to his or her

State Service Act 2000
Act No. 85 of 2000

Part 2 – The State Service

s. 10

employment must declare that gift as prescribed by the regulations.

- (13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.
- (14) An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.
- (15) An employee must comply with any other conduct requirement that is prescribed by the regulations.
- (16) For the purposes of this section, a reference to an employee includes a reference to an officer and a reference to State Service employment includes a reference to an appointment as an officer and an arrangement made under section 46(1)(a).

10. Breaches of Code of Conduct

- (1) The Minister may impose one or more of the following sanctions on an employee who is found, under procedures established under subsection (3), to have breached the Code of Conduct:
 - (a) counselling;
 - (b) a reprimand;
 - (c) deductions from salary by way of fine not exceeding 20 penalty units;

State Service Act 2000
Act No. 85 of 2000

s. 10

Part 2 – The State Service

- (d) reduction in salary within the range of salary applicable to the employee;
 - (e) reassignment of duties;
 - (f) reduction in classification;
 - (g) termination of employment in accordance with section 44 or 45.
- (2) The Minister may delegate the power to impose any of the sanctions specified in subsection (1)(a) to (f).
- (3) The Employer is to establish procedures for the investigation and determination of whether an employee has breached the Code of Conduct.
- (4) The procedures referred to in subsection (3) –
- (a) are to afford procedural fairness in the determination of whether an employee has breached the Code of Conduct; and
 - (b) may be different for different categories of employees; and
 - (c) may vary according to the circumstances of the alleged breach of the Code of Conduct.
- (5) An officer or an employee must not victimise, or discriminate against, another officer or employee because that officer or employee has reported breaches (or alleged breaches) of the Code of Conduct to the Employer, a Head of Agency or the Integrity Commissioner.

State Service Act 2000
Act No. 85 of 2000

PART 3 – ADMINISTRATIVE ARRANGEMENTS AND REORGANISATIONS

11. Establishment of Government departments and State authorities as Agencies

(1) The Governor may, on the recommendation of the Minister, by order –

- (a) establish, abolish or change the name of a Government department or State authority; or
- (b) restructure Government departments and State authorities.

(2) For the purpose of subsection (1)(b),

restructure includes –

- (a) amalgamating a Government department or State authority with another Government department or State authority; and
- (b) amalgamating a part or parts of a Government department or State authority with another Government department or State authority; and
- (c) amalgamating a part or parts of a Government department or State authority with a part or parts of another Government department or State authority –

State Service Act 2000
Act No. 85 of 2000

s. 12

Part 3 – Administrative arrangements and reorganisations

but does not include restructuring which is wholly internal to a Government department or a State authority.

- (3) In subsections (1) and (2), a reference to a State authority shall be read as a reference to that State authority in its capacity as an Agency for the purposes of this Act.

12. Amendment to Schedule 1

- (1) The Governor may, by order, amend Column 1 of Schedule 1 –
- (a) by omitting the name of any Agency; or
 - (b) by inserting the name of a Government department, State authority or other organisation; or
 - (c) where the name of an Agency is changed, by omitting the name of that Agency and substituting its new name.
- (2) The Governor may, by order, amend Column 2 of Schedule 1 by inserting, opposite the name of an Agency, the title or other description of an office or by omitting or amending that title or other description.
- (3) The Governor may, by order, omit Schedule 1 and substitute a Schedule containing in Column 1 the names of Agencies and containing in Column 2 the titles or other descriptions of offices.

State Service Act 2000
Act No. 85 of 2000

13. Administrative reorganisations

- (1) If the Governor is satisfied that it is necessary or desirable in order to give effect to a reallocation of activities from a State authority that is not an Agency to the State Service, the Governor may, by order, determine in writing that a person employed by a State authority that is not an Agency ceases to be employed by that authority and becomes an employee in a specified Agency.
- (2) The regulations may prescribe arrangements for determining any variation of the salary and conditions of employment applicable to persons who become employees under subsection (1).

PART 4 – THE EMPLOYER

14. The Employer

The Employer is the Minister administering this Act.

15. Functions of Employer

- (1) The Employer has the following functions:
 - (a) to take such steps as the Employer considers necessary to uphold, promote and ensure adherence to the State Service Principles;
 - (b) to determine practices, procedures and standards in relation to management of, and employment in, the State Service and to evaluate their application within Agencies;
 - (c) to consult with, and provide assistance to, Heads of Agencies in relation to the implementation of the State Service Principles and the Code of Conduct;
 - (d) to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct;
 - (e) to determine requirements for the employment of employees or groups of employees in the State Service;

State Service Act 2000
Act No. 85 of 2000

Part 4 – The Employer

s. 15

- (f) to determine duties to be of a senior executive nature or equivalent specialist nature;
 - (g) to develop and coordinate training, education and development programs for the State Service;
 - (h) to develop and implement recruitment programs for the State Service;
 - (i) to develop classification standards for officers not covered by an award and, where appropriate, procedures to enable Heads of Agencies to classify duties to be performed by officers within the State Service and, where no classification standards have been developed, to approve the assignment of classifications to duties of officers;
 - (j) to develop principles and standards to assist Heads of Agencies in the management of the performance of employees.
- (2) The Employer, in performing the functions referred to in subsection (1), is to act according to equity and good conscience and in a manner that is consistent with the provisions of this Act.
- (3) The Employer is to keep a record of all officers and employees showing such details as are prescribed.

16. Powers of Employer

- (1) The Employer may, consistent with the provisions of this Act, do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of the Employer's functions under this Act.
- (2) Without limiting subsection (1), in addition to any power conferred on the Employer by any other provision of this Act, the Employer may, for the purpose of carrying out the Employer's functions under this Act –
 - (a) conduct such investigations as the Employer considers necessary for the purposes of this Act; and
 - (b) refer any matter arising under this Act to the Ombudsman, Integrity Commission, Tasmanian Industrial Commission, Anti-Discrimination Commissioner or any other person or body that may be prescribed by the regulations; and
 - (c) disclose information to the Integrity Commission if the information is relevant to the performance or exercise by the Integrity Commission of its functions or powers.

17. Employment Directions

- (1) The Employer may issue Employment Directions which relate to the administration of the State Service and employment matters

State Service Act 2000
Act No. 85 of 2000

Part 4 – The Employer

s. 17

relevant to this Act and which have effect according to their tenor unless they are inconsistent with or repugnant to other provisions of this Act.

- (2) Employment Directions may be issued under this section –
- (a) so as to apply –
 - (i) to employees generally or to a specified class or classes of employees; and
 - (ii) to officers generally or to a specified class or classes of officers; and
 - (iii) generally or in a particular case or class of cases or in particular cases or classes of cases; and
 - (iv) at all times or at a specified time or at specified times; and
 - (v) throughout the State or in a specified part or specified parts of the State; and
 - (vi) throughout the State Service or in a specified Agency or Agencies; and
 - (b) so as to require a matter affected by them to be –

State Service Act 2000
Act No. 85 of 2000

s. 17

Part 4 – The Employer

- (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of persons or bodies; and
- (c) so as to confer on a specified person or body or a specified class of persons or bodies a discretionary authority; and
- (d) so as to provide that, in a specified case or a specified class of cases, whether on specified conditions or unconditionally, persons or things of a class, or classes of persons or things, may be exempted from the Employment Directions, either wholly or to such extent as is specified; and
- (e) so as to –
- (i) revoke any Ministerial Directions or Commissioner’s Directions in force under this Act immediately before the commencement of the *State Service Amendment Act 2012*; or
 - (ii) vary or revoke any Employment Directions.
- (3) In subsection (2) –

State Service Act 2000
Act No. 85 of 2000

Part 4 – The Employer

s. 18

specified means specified in the Employment Directions.

- (4) Employment Directions issued under this section are not statutory rules within the meaning of the *Rules Publication Act 1953*.
- (5) The Ministerial Directions and Commissioner's Directions in force under this Act immediately before the commencement of the *State Service Amendment Act 2012* remain in force until revoked under subsection (2)(e)(i).

18. Investigations into administrative and management matters

- (1) The Employer may request the Auditor-General to conduct an investigation into any matter which relates to the administration or management of the State Service.
- (2) The Employer may make arrangements with any Head of Agency for such officers, employees and resources as the Employer considers necessary to be made available to the Auditor-General to enable an investigation referred to in subsection (1) to be conducted.
- (3) The Auditor-General may examine the performance and exercise of the Employer's functions and powers under this Act.
- (4) The Auditor-General is to include in the annual plan referred to in section 11 of the *Audit Act 2008* such matters as the Auditor-General considers necessary to be examined pursuant to

State Service Act 2000
Act No. 85 of 2000

s. 19

Part 4 – The Employer

the exercise of the Auditor-General's power under subsection (3).

19. Reports by Employer

The Employer, on or before 31 October in each year, is to send to both Houses of Parliament a report on the performance and exercise of the Employer's functions and powers during the period of 12 months ending on 30 June in that year.

State Service Act 2000
Act No. 85 of 2000

Part 5 – Head of the State Service

s. 20

PART 5 – HEAD OF THE STATE SERVICE

20. Head of the State Service

- (1) The Premier is to appoint a person holding an office specified in Column 2 of Part 1 of Schedule 1 to be the Head of the State Service.
- (2) The Head of the State Service is to perform and exercise the functions and powers of the Employer under this Act (other than the power to issue Employment Directions).
- (3) Anything done by the Head of the State Service pursuant to subsection (2) is taken to have been done, and is as valid and effectual as if it had been done, by the Employer.
- (4) In addition to performing the functions and exercising the powers referred to in subsection (2), the Head of the State Service is to perform and exercise such other functions and powers as may be specified in this Act.

21. Delegation by Head of the State Service

The Head of the State Service may delegate –

- (a) any of the functions and powers of the Employer that the Head of the State Service is to perform or exercise by virtue of section 20(2); and
- (b) any of his or her other functions or powers (other than this power of delegation).

State Service Act 2000
Act No. 85 of 2000

Part 5 – Head of the State Service

22 - 28.

State Service Act 2000
Act No. 85 of 2000

Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

s. 29

**PART 6 – HEADS OF AGENCIES, HOLDERS OF
PRESCRIBED OFFICES AND SENIOR EXECUTIVES**

29. Creation of certain offices of Head of Agency and senior executive

- (1) Each office of Head of Agency specified in Column 2 of Division 1 of Part 1 of Schedule 1 is taken to be created by virtue of this Act.
- (2) If Column 2 of Division 1 of Part 1 of Schedule 1 is amended by the omission of the title or other description of an office, that office of Head of Agency is taken to be abolished by virtue of this Act.
- (3) If Column 2 of Division 1 of Part 1 of Schedule 1 is amended by amending the title or other description of an office of Head of Agency, the title or other description of that office is taken to be amended by virtue of this Act.
- (4) If the Employer has determined duties to be of a senior executive nature or equivalent specialist nature, the Premier may create an office to enable those duties to be performed.
- (5) The Premier may abolish an office created under subsection (4).

30. Heads of Agencies

The person holding the office specified in Column 2 of Schedule 1 opposite the name of an

State Service Act 2000
Act No. 85 of 2000

s. 31 Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

Agency in Column 1 of that Schedule is, for the purposes of this Act, the Head of that Agency.

31. Appointment, &c., of officers

- (1) The Premier, on behalf of the Crown, may appoint a person as an officer to a vacancy –
 - (a) in an office created under section 29; or
 - (b) in any prescribed office.
- (2) The Premier may delegate the power to appoint a person to an office created under section 29(4).
- (3) The provisions of this Act (other than Division 1 of Part 7 and sections 47 and 50(1)(a)) apply to a person appointed under subsection (1) as a senior executive as if that person were an employee.
- (4) An officer –
 - (a) holds office for such period as is specified in his or her instrument of appointment; and
 - (b) is entitled to such remuneration and allowances as are specified in his or her instrument of appointment; and
 - (c) is taken to be an employee for the purposes of the *Long Service Leave (State Employees) Act 1994*; and

State Service Act 2000
Act No. 85 of 2000

-
- (d) holds office on such terms and conditions with respect to matters not provided for in this Act in relation to officers as are specified in the instrument of appointment.
- (5) A person who is a member of a House of Parliament of the Commonwealth, or of a State or Territory of the Commonwealth, or a candidate for election as a member of such House of Parliament, is disqualified from being appointed to an office created under section 29 and, if a person holding such an office becomes a candidate for election as such a member, that person vacates that office on becoming such a candidate.
- (6) For the purposes of subsection (5), a person becomes a candidate for election as a member of a House of Parliament when nominated for that election in accordance with the law regulating the election.
- (7 - 9)
- (10) An officer is to comply with any Employment Directions.
- (11) A person appointed as an officer, whose appointment is not renewed or whose appointment is terminated before the expiration of the term for which he or she was appointed, may, subject to subsection (12), by notice in writing served on the Employer, elect, within 14

State Service Act 2000
Act No. 85 of 2000

s. 31A Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

days after the termination or expiration, to be reappointed as a permanent employee.

- (12) A person referred to in subsection (11) may only make an election if, immediately before his or her first appointment as an officer, the person was a permanent employee and has since that appointment been continuously appointed as an officer.
- (13) A person who elects under subsection (11) to be reappointed as a permanent employee is taken to be a permanent employee in the Agency in which the employee was appointed immediately before the employee so elected.
- (14) A person who is taken to be a permanent employee under subsection (13) is entitled to be paid a salary not less than the salary which the person would have been entitled to be paid if the person had remained at the classification applicable to the person's appointment as a permanent employee immediately before his or her appointment as an officer.

31A. Appointments under other Acts

Where the Minister administering this Act is required in any other Act to make an appointment under this Act, the appointment is to be made by the Premier if the appointment is to an office created under section 29 or any prescribed office.

State Service Act 2000
Act No. 85 of 2000

Part 6 – Heads of Agencies, holders of prescribed offices and Senior
Executives

s. 32

32. Termination of office of certain Heads of Agencies, holders of prescribed offices and senior executives

- (1) The Premier may terminate the appointment of an officer in accordance with the provisions specified in that person's instrument of appointment.
- (2) The Premier may delegate the power to terminate the appointment of a senior executive.

33. Transfer of certain Heads of Agencies and senior executives

- (1) The Premier may transfer a person appointed to an office specified in Division 1 of Part 1 of Schedule 1 to any other office specified in that Division.
- (2) The Premier may transfer a senior executive from an office created under subsection (4) of section 29 to another office created under that subsection.
- (3) The Premier may delegate the power to transfer a senior executive.
- (4) A person transferred under subsection (1) or (2) is to receive a salary level not less than the salary level he or she received immediately before the transfer.

State Service Act 2000
Act No. 85 of 2000

s. 34

Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

34. Functions and powers of Heads of Agencies

- (1) Subject to any Employment Direction, the functions of a Head of Agency are –
 - (a) to ensure that the Agency is operated as effectively, efficiently and economically as is practicable; and
 - (b) to determine duties to be performed by employees in that Agency; and
 - (c) to allocate duties to positions in that Agency and to vary such duties; and
 - (d) to assign a classification to duties to be performed in that Agency and to vary such a classification –
 - (i) in accordance with award requirements; and
 - (ii) in accordance with classification standards and procedures determined by the Employer or, where no such standards or procedures have been determined, with the approval of the Employer; and
 - (e) to assign duties to each employee within that Agency and to vary those duties; and
 - (f) to ensure that the services of employees in that Agency are used as effectively and efficiently as is practicable; and

State Service Act 2000
Act No. 85 of 2000

Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

s. 34

-
- (g) to ensure a performance management plan is prepared in consultation with an officer or employee employed in that Agency in relation to the officer or employee in accordance with systems established by that Agency; and
 - (ga) to develop and implement effective performance management and associated development for all officers and employees employed in that Agency to enable those officers and employees to plan and achieve the standard and requirements identified in the performance management plan relating to the officer or employee; and
 - (h) to develop and implement a workplace diversity program in that Agency to assist in giving effect to the State Service Principles; and
 - (i) to assist an officer or employee employed in that Agency to undertake such training, education and development as is identified in the performance management plan relating to the officer or employee to ensure the officer or employee achieves the standard and requirements identified in that plan in the performance of the duties assigned to them and for which they are accountable; and

State Service Act 2000
Act No. 85 of 2000

s. 35 Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

- (j) to develop and implement an internal grievance resolution system in the Agency; and
 - (k) such other functions as are imposed on the Head of Agency by or under this Act.
- (2) A Head of Agency may, with the approval of the Employer, make standing orders for the purposes of the administration and operation of the Agency.

35. Delegation

A Head of Agency may delegate any of his or her functions or powers under this Act or any other Act (other than this power of delegation).

36. Annual reports by Heads of Agencies

- (1) Each Head of Agency, in each year, is to submit to the appropriate Minister a report, in a form approved by the Minister after consultation with the Treasurer, for the period of 12 months that ended on the last preceding 30 June (or such other period of 12 months as may be prescribed) relating to –
- (a) the performance of the functions and the exercise of the powers of the Head of Agency under this Act; and
 - (b) the performance of the functions and the exercise of the powers of –

State Service Act 2000
Act No. 85 of 2000

Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

s. 36

-
- (i) any statutory office the holder of which is employed in or attached to that Agency; or
 - (ii) any State authority attached to that Agency; and
 - (ba) the effectiveness within that Agency of the development and implementation of performance management; and
 - (c) such other matters as may be prescribed.
- (1A) Each Head of Agency, in each year, is to submit to the Head of the State Service in a form approved by the Head of the State Service, for the period of 12 months that ended on the last preceding 30 June, a report relating to the employment of persons under this Act.
- (2) A report required to be submitted under subsection (1) is to be combined in a single document with a report required to be made under section 40(1) of the *Financial Management Act 2016* so as to form an annual report.
- (3) Notwithstanding subsection (1), the report of a Head of Agency is not to contain any matter that is required under any other enactment to be submitted to a Minister by the holder of a statutory office employed in or attached to that Agency or by any State authority attached to that Agency.

State Service Act 2000
Act No. 85 of 2000

s. 36 Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

- (4) In each year, the appropriate Minister is to, on or before 31 October or such other date as may be prescribed, cause a copy of the report referred to in subsection (1) to be laid on the table of each House of Parliament.
- (5) A date prescribed for the purposes of subsection (4) is to be determined after consultation with the Minister responsible for the administration of the *Financial Management Act 2016* and is to be a date not later than 4 months after the end of the period of 12 months prescribed under subsection (1).
- (6) If the appropriate Minister is unable to comply with subsection (4) by reason of the fact that either House of Parliament is not sitting, the appropriate Minister, on 31 October or such other date as is prescribed under subsection (4), as the case may require, is to –
 - (a) forward a copy of the report referred to in subsection (1) to the Clerk of the Legislative Council and the Clerk of the House of Assembly; and
 - (b) make the report available to the public –and, within the next 7 sitting days of that House, is to cause a copy of the report to be laid before that House.
- (7) If 31 October or such other date as is prescribed under subsection (4) is a Sunday or any day which is a bank holiday or a public holiday throughout the State, which days are in this

State Service Act 2000
Act No. 85 of 2000

Part 6 – Heads of Agencies, holders of prescribed offices and Senior Executives

s. 36

section referred to as excluded days, subsection (6) is taken to be complied with if a copy of the report is forwarded to the Clerk of the Legislative Council and the Clerk of the House of Assembly, and is made available to the public, on the next day afterwards, not being an excluded day.

- (8) The regulations may prescribe different periods of 12 months for the purposes of subsection (1) in relation to different Heads of Agencies, different Agencies and different parts of Agencies.

State Service Act 2000
Act No. 85 of 2000

s. 37

Part 7 – State Service Employees

PART 7 – STATE SERVICE EMPLOYEES

*Division 1 – Appointment, promotion, transfer and
termination*

37. Appointment and promotion of employees

- (1) The appointment of a person as an employee or the promotion of a permanent employee –
 - (a) is to be based on merit and made in accordance with Employment Directions; and
 - (b) is to be made by the Employer on behalf of the Crown.
- (2)
- (3) The appointment of a person as an employee is to be –
 - (a) as a permanent employee; or
 - (b) for a specified term or for the duration of a specified task.
- (4) The Employer may change the employment status of an employee from a fixed-term employee to a permanent employee.
- (5) A person is not to be appointed as an employee or a permanent employee is not to be promoted unless he or she possesses such qualifications and meets such other requirements as are determined by the Employer as being required

State Service Act 2000
Act No. 85 of 2000

Part 7 – State Service Employees

s. 38

for the duties to which the appointment or promotion relates.

- (6) The Employer is to determine conditions of probation for employees including the duration of probation either generally or for specific categories of employees.
- (7) The appointment of a person as a permanent employee is to be on probation unless otherwise determined by the Employer.

38. Terms and conditions of employment of employees

- (1) The terms and conditions of employment of employees are to be those specified in an award relating to persons engaged in the work for which they are employed or, if no such award is in force, are to be determined by the Employer.
- (2) The salary of a permanent employee is not to be reduced –
 - (a) without the employee's consent; or
 - (b) unless in accordance with section 10, 47 or 48.
- (3) If a permanent employee is appointed as an officer or for a specified term or for the duration of a specified task, the employee is entitled to retain all existing and accruing rights with respect to leave as if the employee's service as an officer or for the specified term or for the duration of the specified task were a

State Service Act 2000
Act No. 85 of 2000

s. 39

Part 7 – State Service Employees

continuation of the employee’s service as a permanent employee.

(4 - 7)

39. Procedure for appointments and promotions

- (1) If a Head of Agency requires duties to be performed in an Agency by the appointment of a person or the promotion of a permanent employee under section 37 to perform those duties, the Head of Agency is to advertise those duties in accordance with Employment Directions unless the Employer otherwise determines.
- (2) If the classification assigned to duties is varied in accordance with section 34(1)(d), those duties are taken not to be assigned to an employee and are to be dealt with in accordance with subsection (1).
- (3) The Head of Agency is to select, in accordance with the State Service Principles, a person or employee to perform the duties referred to in subsection (1) or (2).
- (4) The Employer, subject to the outcome of an application for a review under section 50(1)(a), is to appoint or promote under section 37(1) the person or employee selected by the Head of Agency to perform the duties.
- (5) If an employee has made application for a review to the Tasmanian Industrial Commission under section 50(1)(a) and the Tasmanian

State Service Act 2000
Act No. 85 of 2000

Industrial Commission directs under section 51 that the selection be undertaken again, no appointment is to be made under subsection (4) until that direction is complied with.

40. Request by Head of Agency to promote permanent employee without advertising

- (1) Without limiting the Employer's discretion under subsection (1) of section 39, the Employer may determine that duties not be advertised in accordance with that subsection if the Employer is satisfied that –
 - (a) it is the appropriate course of action in the circumstances; and
 - (b) not advertising those duties is consistent with section 7(1)(b).
- (2) If a Head of Agency intends to request the Employer to exercise discretion in relation to not advertising duties under subsection (1), other than duties to be performed for a specified term or for the duration of a specified task, the Head of Agency, with the approval of the Employer, is to notify that intention in the *Gazette*.
- (3) An employee aggrieved by the Head of Agency's intention to make a request under subsection (2) may make application to the Tasmanian Industrial Commission for a review in accordance with section 50(1)(b).
- (4) If the Tasmanian Industrial Commission determines an application for a review in favour

State Service Act 2000
Act No. 85 of 2000

s. 41

Part 7 – State Service Employees

of the employee who made the application, the Head of Agency is not to request the Employer to exercise discretion in relation to not advertising the relevant duties under subsection (1).

41. Voluntary transfers between Agencies

- (1) A Head of Agency may, with the agreement in writing of an employee, transfer the employee to the Head's Agency from another Agency at a salary level not higher than the salary level of the employee before the transfer.
- (2) A Head of Agency may enter into an agreement in writing with an employee for the employee to transfer to the Head's Agency for a specified period.
- (3) A transfer under subsection (2) is to be made with the agreement of the Head of the Agency in which the employee was employed immediately before the transfer.
- (3A) An employee or officer may be transferred to the Police Service as a police officer in accordance with section 24 of the *Police Service Act 2003*.
- (4) Subject to Employment Directions, an agreement under this section has effect according to its terms, by force of this section.

42. Compulsory transfers between Agencies

- (1) Subject to subsection (2), the Employer may transfer an employee from an Agency to another

State Service Act 2000
Act No. 85 of 2000

Agency to undertake duties having a similar salary level.

- (2) The Employer may not transfer an employee from an Agency to another Agency to undertake duties having a lower salary level unless the employee has consented in writing to such a transfer.
- (3) In transferring an employee under subsection (1), the Employer is to –
 - (a) have regard to the knowledge, skills, qualifications and experience of the employee; and
 - (b) be satisfied that the employee can reasonably be required to perform the duties to which the employee is to be transferred.
- (4)

43. Suspension

Employment Directions may make provision in relation to the suspension from duties of employees, with or without salary.

44. Termination of employment of officers and employees

- (1) The Minister may at any time, by notice in writing, terminate the employment of a permanent employee.

State Service Act 2000
Act No. 85 of 2000

s. 44

Part 7 – State Service Employees

- (2) The notice is to specify the ground or grounds that are relied on for the termination.
- (3) The following are the only grounds for termination:
 - (a) that the permanent employee is found under section 10 to have breached the Code of Conduct;
 - (b) that the Head of Agency has requested the Minister under section 47(11) to terminate the employment of the permanent employee;
 - (c) that the permanent employee is found under section 48 to be unable to efficiently and effectively perform the duties assigned to that employee;
 - (ca) that the officer or employee is not performing his or her functions to the standard and requirements identified in the performance management plan relating to the officer or employee;
 - (d) any other ground prescribed by the regulations.
- (4) The Minister may, by instrument in writing, delegate to a Head of Agency, on such terms and conditions as the Minister may determine, the Minister's power of termination of permanent employees.

State Service Act 2000
Act No. 85 of 2000

- (5) The Minister may, by instrument in writing, revoke wholly or in part or vary a delegation made under this section.
- (6) The power of termination delegated to a Head of Agency when exercised by the Head of Agency is taken to have been exercised by the Minister.

45. Termination of employment of fixed-term employees

- (1) The Employer may at any time, by notice in writing, terminate the employment of a fixed-term employee in accordance with the terms and conditions under which the employee is appointed.
- (2)

Division 2 – Secondment and redeployment

46. Arrangements relating to secondment of persons

- (1) If the Employer considers it is in the public interest to do so, the Employer, with the agreement of the Head of Agency and, where relevant, an employee, may make an arrangement for –
 - (a) a person who is not an employee to undertake duties in the Agency; or
 - (b) an employee to undertake duties with an organisation that is not an Agency.

State Service Act 2000
Act No. 85 of 2000

s. 46

Part 7 – State Service Employees

- (2) An arrangement under subsection (1) may provide for such matters as the parties to the arrangement consider appropriate.
- (3) If a person who enters into an arrangement under subsection (1) is an employee within the meaning of the *Long Service Leave (State Employees) Act 1994*, the period to which the arrangement relates is taken to be service for the purposes of that Act.
- (4) If a person who enters into an arrangement under subsection (1) is –
 - (a)
 - (b) a member of a superannuation scheme, other than the contributory scheme within the meaning of the *Public Sector Superannuation Reform Act 2016*, employer superannuation contributions are to be specified in the arrangement.
- (5) An arrangement under subsection (1) may be terminated, or its terms and conditions varied, in accordance with the terms and conditions of that arrangement.
- (6) In this section,
parties means –
 - (a) in the case of an arrangement under subsection (1)(a), the Employer, the person and the Head of Agency; and

State Service Act 2000
Act No. 85 of 2000

Part 7 – State Service Employees

s. 47

- (b) in the case of an arrangement under subsection (1)(b), the Employer, the employee to whom the arrangement relates, the Head of Agency and the organisation.

47. Redeployment

- (1) If a Head of Agency considers a permanent employee employed in the Agency to be surplus to the requirements of the Agency, the Head of Agency is to –
 - (a) advise the employee, in writing, of the Head of Agency’s intention to recommend to the Employer that the employee be made available for redeployment and the reasons for that intention; and
 - (b) request the employee to provide a response, within 14 days of being so advised, to the Head of Agency.
- (2) At the expiration of the period of 14 days referred to in subsection (1), if the Head of Agency, after considering the employee’s response (if any), decides that the employee is surplus to the requirements of the Agency, the Head of Agency may recommend to the Employer that the employee be made available for redeployment.
- (3) When making a recommendation under subsection (2), the Head of Agency is to forward

State Service Act 2000
Act No. 85 of 2000

s. 47

Part 7 – State Service Employees

any employee's response referred to in subsection (1)(b) to the Employer.

- (4) If the Employer accepts the recommendation, the Employer is to take such action as the Employer considers reasonable and practicable to identify duties in the State Service which could be assigned to the employee.
- (5) The Employer may assign duties in the State Service to the employee –
 - (a) having regard to the aptitude, knowledge, skills, qualifications and experience of the employee; and
 - (b) if the Employer is satisfied that the employee can reasonably be required to perform the relevant duties.
- (6) If the Employer has indicated to a Head of Agency his or her intention to assign duties to an employee under subsection (5), the Head of Agency is not to assign those duties without the approval of the Employer.
- (7) An employee who is assigned duties under subsection (5) is to be paid, for a period of 12 months from the day on which the employee is assigned those duties, a salary not less than the salary which the employee was paid before being so assigned those duties.
- (8) After the expiration of the 12 month period referred to in subsection (7), the employee is to be paid the salary applicable to the classification

State Service Act 2000
Act No. 85 of 2000

Part 7 – State Service Employees

s. 47

in respect of the duties which have been assigned to the employee.

- (9) During the period between the date on which the Employer accepts the recommendation of the Head of Agency for redeployment and the date on which the employee is assigned duties by the Employer or the date on which the Employer advises the Head of Agency of the Employer's inability to effect the redeployment, whichever is the earlier, the Head of Agency must ensure that the services of the employee are used as effectively and efficiently as is practicable.
- (10) If the Employer is unable to assign duties to the employee within a period of 6 months from the day on which the Employer accepts the recommendation of the Head of Agency under subsection (4), the Employer must notify, in writing, the Head of Agency of the Employer's inability to do so.
- (11) If the Employer notifies the Head of Agency of the Employer's inability to assign duties to the employee, the Head of Agency may request the Minister to terminate the employment of the employee in accordance with section 44(3)(b).
- (12) During the period referred to in subsection (9), the Employer may suspend that period for such term as the Employer determines.

State Service Act 2000
Act No. 85 of 2000

s. 48

Part 7 – State Service Employees

Division 3 – Inability to perform duties

48. Inability of employees to perform duties

- (1) The Employer may take one or more of the following actions in relation to an employee who is found, under procedures established under subsection (3), to be unable to efficiently and effectively perform the duties assigned to the employee:
 - (a) direct appropriate counselling;
 - (b) direct appropriate retraining;
 - (c) reduce salary within the range of salary applicable to the employee;
 - (d) reassign duties;
 - (e) reduce classification;
 - (f) terminate employment in accordance with section 44 or 45.
- (2) The Employer may delegate the power to take any of the actions specified in subsection (1)(a) to (e).
- (3) The Employer is to establish procedures for the investigation and determination of whether an employee is able to efficiently and effectively perform the duties assigned to the employee.
- (4) The procedures referred to in subsection (3) –

State Service Act 2000
Act No. 85 of 2000

Part 7 – State Service Employees

s. 49

- (a) are to afford procedural fairness in the determination of whether an employee is able to efficiently and effectively perform the duties assigned to the employee; and
- (b) may be different for different categories of employees; and
- (c) may vary according to the circumstances in which the employee is alleged to be unable to efficiently and effectively perform the duties assigned to the employee.

Division 4 – Review of actions

49. Interpretation of Division 4

In this Division –

action includes a refusal or failure to act;

State Service action means action by an officer or an employee but does not include an action to make an appointment under section 31(1).

50. Review of actions

- (1) Subject to subsections (2) and (3), an employee is entitled to make application to the Tasmanian Industrial Commission for a review –
 - (a) of the selection of a person or an employee to perform duties other than

State Service Act 2000
Act No. 85 of 2000

s. 50A

Part 7 – State Service Employees

duties to be performed for a specified term or for the duration of a specified task; or

(b) of any other State Service action that relates to his or her employment in the State Service.

- (2) An employee is not entitled to make an application for a review under subsection (1)(a) if that employee was not an applicant for the duties to which the appointment or promotion relates.
- (3) An employee is not entitled to make an application for a review under subsection (1)(b) in respect of the termination of the employee's employment.
- (4) Notwithstanding anything contained in subsection (1), (2) or (3), disputes in relation to the decision to terminate employment are to be dealt with by the appropriate industrial tribunal in accordance with the legislation under which that tribunal is established.

50A. Relationship with Ombudsman and other persons

The Tasmanian Industrial Commission is not empowered to determine a matter under section 51 that is within the jurisdiction of and is being dealt with by the Ombudsman, Integrity Commission or Anti-Discrimination Commissioner, or any other person or body that may be prescribed, until the matter has been dealt with.

State Service Act 2000
Act No. 85 of 2000

Part 7 – State Service Employees

s. 51

51. Determination of a review

(1) Subject to subsection (1A), the procedure for a review under section 50(1) is to be determined by the President of the Tasmanian Industrial Commission.

(1A) Timeframes for an employee to apply for a review under section 50(1) are as prescribed by the regulations.

(2) The procedure determined by the President of the Tasmanian Industrial Commission may provide for an internal review to be conducted within the Agency in which the State Service action was taken before the conduct of the review by the Tasmanian Industrial Commission.

(3) The procedure referred to in subsection (1) –

(a) is to afford procedural fairness; and

(b) may be different for different categories of employees; and

(c) may vary according to the circumstances in which the State Service action occurred.

(4) Before the determination of the application for a review, the Tasmanian Industrial Commission may direct the Head of Agency to take such action relating to the subject matter of the review as the Tasmanian Industrial Commission considers to be appropriate.

State Service Act 2000
Act No. 85 of 2000

s. 51

Part 7 – State Service Employees

- (5) If the Tasmanian Industrial Commission is of the opinion that an application for a review is frivolous or vexatious, the Tasmanian Industrial Commission may refuse to undertake the review and dismiss the application.
- (6) In the determination of an application for a review, the Tasmanian Industrial Commission may –
 - (a) refuse to grant the application for a review and, if appropriate, direct the Head of Agency to take such action as the Tasmanian Industrial Commission considers appropriate; or
 - (b) in the case of an application for a review under section 50(1)(a), grant the application and direct the Head of Agency to undertake again the selection in accordance with section 39 and undertake such other requirements as are imposed by the Tasmanian Industrial Commission; or
 - (c) in the case of an application for a review under section 50(1)(b), grant the application and recommend or direct the Employer or the Head of Agency or any person to whom the powers of the Employer or the Head of Agency have been delegated, to take such action as the Tasmanian Industrial Commission considers appropriate.

State Service Act 2000
Act No. 85 of 2000

Part 7 – State Service Employees

s. 51

- (7) The determination of the Tasmanian Industrial Commission in respect of an application for a review is final.
- (8) The Tasmanian Industrial Commission, on or before 31 October or such other date as may be prescribed, is to lay before each House of Parliament a report on the performance of its functions and exercise of its powers under this Act during the period of 12 months ending on the last preceding 30 June.

State Service Act 2000
Act No. 85 of 2000

s. 51A

Part 7A – Managing for Performance

PART 7A – MANAGING FOR PERFORMANCE

51A. Role and responsibility of Head of Agency in relation to managing for performance

- (1) The Head of Agency is to ensure that performance management and development in that Agency is integrated with employment practices in, and the business direction of, that Agency to enable quality services to be delivered across the State Service.
- (2) The Head of Agency is to ensure that performance management and development is focused on the advancement of the business direction of that Agency to enable quality services to be delivered across the State Service.
- (3) The Head of Agency is to ensure that –
 - (a) all officers and employees employed in that Agency participate in performance management programs and systems established in that Agency; and
 - (b) all officers and employees employed in that Agency understand the importance of, and work to achieve performance to, the standard and requirements identified in the performance management plan relating to the officer or employee in the carrying out of their functions and exercise of their powers; and
 - (c) effective performance management and supporting development systems and

State Service Act 2000
Act No. 85 of 2000

Part 7A – Managing for Performance

s. 51B

programs are established and implemented for all officers and employees employed in that Agency; and

- (d) information relating to performance management and supporting development systems and programs established in that Agency are made available to all officers and employees employed in that Agency.

51B. Role and responsibility of officers and employees in participating in, and managing for, performance

An officer or employee employed in an Agency is to –

- (a) actively prepare for and participate in performance management programs and systems established in that Agency; and
- (b) perform his or her functions to the standard and requirements identified in a performance management plan relating to the officer or employee; and
- (c) undertake any training, education and development that is identified from his or her participation in the performance management programs and systems established in that Agency as being relevant for the development of that officer or employee –

to ensure that –

State Service Act 2000
Act No. 85 of 2000

s. 51C

Part 7A – Managing for Performance

- (d) he or she is accountable for the work produced by the officer or employee; and
- (e) he or she is responsive to Government priorities in the performance or exercise of his or her functions or powers; and
- (f) he or she delivers quality services in the performance or exercise of his or her functions or powers.

51C. Underperformance, &c., of officer or employee

- (1) The Employer may issue an Employment Direction relating to –
 - (a) the responsibilities of the Head of Agency in relation to performance management and reporting on performance management; and
 - (b) the action that may be taken by the Head of Agency in relation to an officer or employee who is not performing his or her functions to the standard and requirements identified in the performance management plan relating to the officer or employee, which may include recommending to the Employer the termination of the employment of the officer or employee; and
 - (c) the action that may be taken by the Head of Agency in recognising performance greater than the standard and requirements identified in the

State Service Act 2000
Act No. 85 of 2000

Part 7A – Managing for Performance

s. 51C

performance management plan relating to the officer or employee; and

- (d) any matters contained in this Part.
- (2) If the Head of Agency is of the opinion that an officer or employee employed in that Agency is not performing his or her functions to the standard and requirements identified in the performance management plan relating to the officer or employee, the Head of Agency is to take action with respect to the officer or employee in accordance with the Employment Direction issued under subsection (1).
- (3) If action is taken in accordance with the Employment Direction issued under subsection (1) with respect to an officer or employee, and the Head of the Agency in which the officer or employee is employed is of the opinion that the performance of the officer or employee is not to the standard and requirements identified in the performance management plan relating to the officer or employee, the Head of Agency is to, by notice in writing, inform the officer or employee –
- (a) that in the opinion of the Head of Agency the performance of the officer or employee is not to the standard and requirements identified in the performance management plan relating to the officer or employee; and
- (b) that the Head of Agency intends to recommend to the Employer termination

State Service Act 2000
Act No. 85 of 2000

s. 51C

Part 7A – Managing for Performance

of the employment of the officer or employee in the State Service; and

- (c) that the officer or employee may within 14 days of the date of the notice respond to the Head of Agency in relation to the matters contained in the notice.
- (4) The Head of Agency must not give a notice to an officer or employee under subsection (3) unless the officer or employee has been given an opportunity in accordance with the Employment Direction issued under subsection (1) to improve his or her performance.
- (5) The Head of Agency may, not before the expiration of 14 days from the date of the notice, after considering the response of the officer or employee, take action in relation to the officer or employee which may include recommending to the Employer the termination of the employment of the officer or employee in the State Service.

PART 8 – MISCELLANEOUS

52. Public notification

A Head of Agency is to cause notice to be published in the *Gazette*, within such period as the Employer determines, of all actions relating to employment as may be prescribed and the notice is conclusive evidence of every such action.

53. Holidays

- (1) Every statutory holiday specified for the whole State under the *Statutory Holidays Act 2000* is to be a holiday throughout the State Service.
- (2) A day or part of a day specified as a statutory holiday in any part of Tasmania under the *Statutory Holidays Act 2000* is to be kept as a holiday or part holiday in all offices of the State Service situated within that part.
- (3) The Employer may at any time appoint any specified day or specified part of a day to be kept as a holiday or part holiday in the offices of the State Service or in the offices of the State Service in any part of Tasmania.
- (4) The Employer or a Head of Agency may require an Agency or part of any Agency to be kept open in the public interest for the whole or any portion of a holiday, and may require the attendance and service of any employee of the Agency during any such holiday.

State Service Act 2000
Act No. 85 of 2000

s. 54

Part 8 – Miscellaneous

- (5) If an employee has been required by the Employer or the Head of Agency to be in attendance at that Agency during any holiday, the employee is to be granted a holiday on such other occasion as the Employer or Head of Agency determines.

54. Fines

- (1) If a fine is imposed on an employee under this Act, the employee is to pay the amount of the fine to the Treasurer in such manner and within such period as may be agreed between the employee and the Treasurer or, if no agreement is reached between the employee and the Treasurer, in such manner and within such time as the Treasurer may determine.
- (2) If an employee or a former employee fails to make a payment in accordance with the agreement or as determined by the Treasurer, the amount of the fine unpaid may be recovered by the Treasurer in a court of competent jurisdiction as a debt due to the Crown.
- (3) All fines imposed, and all fees received, under this Act are to be paid into and form part of the Public Account.

54A. Validation of certain leave balances and purported actions

- (1) In this section –

State Service Act 2000
Act No. 85 of 2000

Part 8 – Miscellaneous

s. 54A

commencement day means the day on which the *State Service Amendment (Validation) Act 2020* commences;

maximum entitlement to recreation leave, in relation to an employee, means the maximum amount of recreation leave that, immediately before the commencement day, the employee was entitled to retain under the regulations.

- (2) A payment, made under an award before the commencement day, to an employee or former employee in lieu of an entitlement to recreation leave is not invalid solely on the basis that the payment related to an entitlement to recreation leave that was greater than the employee's maximum entitlement to recreation leave.
- (3) A period of recreation leave taken by an employee or former employee, before the commencement day, is not invalid solely on the basis that the amount of recreation leave so taken was greater than the employee's maximum entitlement to recreation leave.
- (4) An entitlement to an amount of recreation leave accumulated by an employee, or former employee, before the commencement day is not invalid solely on the basis that the amount of recreation leave so accumulated was greater than the employee's maximum entitlement to recreation leave.
- (5) For the avoidance of doubt, the revocation of a regulation under the *State Service Amendment*

State Service Act 2000
Act No. 85 of 2000

s. 55

Part 8 – Miscellaneous

(Validation) Act 2020 does not prevent the regulations from being amended to include, or being remade with, a regulation on the same subject matter and to the same, or substantially the same, effect.

55. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made for or in relation to any of the following:
 - (a) the specification of terms and conditions of employment of officers and employees;
 - (b) the payment of, and deduction from, salaries, wages and allowances of officers and employees;
 - (c) the circumstances in which, and the conditions subject to which, the employment of officers and employees may be terminated.
 - (d)
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

State Service Act 2000
Act No. 85 of 2000

Part 8 – Miscellaneous

s. 56

- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Employer or a Head of Agency.

56. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Premier; and
- (b) the department responsible to the Premier in relation to the administration of this Act is the Department of Premier and Cabinet.

57. Orders revoked

Any orders made under section 5, 6 or 24 of the *Tasmanian State Service Act 1984* and in existence immediately before the commencement of this Act are revoked.

58. Acts repealed

The Acts specified in Schedule 2 are repealed.

59. Statutory Rules rescinded

The Statutory Rules specified in Schedule 3 are rescinded.

State Service Act 2000
Act No. 85 of 2000

sch. 1

SCHEDULE 1 – AGENCIES

Sections 3(1), 12, 29 and 30

PART 1 – GOVERNMENT DEPARTMENTS

Column 1

Column 2

Agency

Head of Agency

Division 1

Department for Education, Children and Young People	Secretary
--	-----------

Department of Health	Secretary
----------------------	-----------

Department of Justice	Secretary
-----------------------	-----------

Department of Police, Fire and Emergency Management	Secretary
--	-----------

Department of Premier and Cabinet	Secretary
--------------------------------------	-----------

Department of Natural Resources and Environment Tasmania	Secretary
--	-----------

Department of State Growth	Secretary
----------------------------	-----------

Department of Treasury and Finance	Secretary
---------------------------------------	-----------

Division 2

Tasmanian Audit Office	Auditor-General
------------------------	-----------------

State Service Act 2000
Act No. 85 of 2000

sch. 1

PART 2 – STATE AUTHORITIES

Column 1	Column 2
Agency	Head of Agency
Brand Tasmania	Chief executive officer
Environment Protection Authority	Chief executive officer
Homes Tasmania	Chief executive officer
Integrity Commission	Chief executive officer
Macquarie Point Development Corporation	Chief executive officer
Port Arthur Historic Site Management Authority	Chief executive officer
Tasmanian Dairy Industry Authority	Chairperson of the Tasmanian Dairy Industry Authority
The Public Trustee	Chief executive officer
Tourism Tasmania	Chief executive officer

State Service Act 2000
Act No. 85 of 2000

sch. 2

SCHEDULE 2 – ACTS REPEALED

Section 58

Tasmanian State Service Act 1984 (No. 25 of 1984)

Tasmanian State Service (Transitional Provisions) Act 1984
(No. 28 of 1984)

SCHEDULE 3 – STATUTORY RULES RESCINDED

Section 59

Tasmanian State Service (Agency Reporting) Regulations 1990
(No. 123 of 1990)

Tasmanian State Service (Public Service Rescission)
Regulations 1985 (No. 219 of 1985)

Tasmanian State Service Regulations 1985 (No. 216 of 1985)

Tasmanian State Service Amendment Regulations 1986 (No.
81 of 1986)

Tasmanian State Service Amendment Regulations (No. 2) 1986
(No. 101 of 1986)

Tasmanian State Service Amendment Regulations (No. 3) 1986
(No. 296 of 1986)

Tasmanian State Service Amendment Regulations (No. 4) 1986
(No. 297 of 1986)

Tasmanian State Service Amendment Regulations 1987 (No.
67 of 1987)

Tasmanian State Service Amendment Regulations (No. 2) 1987
(No. 76 of 1987)

Tasmanian State Service Amendment Regulations (No. 3) 1987
(No. 204 of 1987)

Tasmanian State Service Amendment Regulations (No. 4) 1987
(No. 223 of 1987)

Tasmanian State Service Amendment Regulations 1988 (No.
58 of 1988)

State Service Act 2000
Act No. 85 of 2000

sch. 3

Tasmanian State Service Amendment Regulations (No. 2) 1988
(No. 59 of 1988)

Tasmanian State Service Amendment Regulations (No. 3) 1988
(No. 89 of 1988)

Tasmanian State Service Amendment Regulations (No. 4) 1988
(No. 134 of 1988)

Tasmanian State Service Amendment Regulations (No. 5) 1988
(No. 145 of 1988)

Tasmanian State Service Amendment Regulations (No. 6) 1988
(No. 179 of 1988)

Tasmanian State Service Amendment Regulations (No. 7) 1988
(No. 192 of 1988)

Tasmanian State Service Amendment Regulations (No. 8) 1988
(No. 215 of 1988)

Tasmanian State Service Amendment Regulations (No. 9) 1988
(No. 240 of 1988)

Tasmanian State Service Amendment Regulations 1989 (No.
77 of 1989)

Tasmanian State Service Amendment Regulations (No. 2) 1989
(No. 78 of 1989)

Tasmanian State Service Amendment Regulations (No. 3) 1989
(No. 100 of 1989)

Tasmanian State Service Amendment Regulations (No. 4) 1989
(No. 118 of 1989)

State Service Act 2000
Act No. 85 of 2000

sch. 3

Tasmanian State Service Amendment Regulations (No. 5) 1989
(No. 120 of 1989)

Tasmanian State Service Amendment Regulations (No. 6) 1989
(No. 128 of 1989)

Tasmanian State Service Amendment Regulations (No. 7) 1989
(No. 152 of 1989)

Tasmanian State Service Amendment Regulations 1990 (No.
22 of 1990)

Tasmanian State Service Amendment Regulations (No. 2) 1990
(No. 41 of 1990)

Tasmanian State Service Amendment Regulations (No. 3) 1990
(No. 71 of 1990)

Tasmanian State Service Amendment Regulations (No. 4) 1990
(No. 213 of 1990)

Tasmanian State Service Amendment Regulations 1992 (No.
34 of 1992)

Tasmanian State Service Amendment (Appeals) Regulations
1992 (No. 94 of 1992)

Tasmanian State Service Amendment Regulations (No. 2) 1992
(No. 95 of 1992)

Tasmanian State Service Amendment Regulations (No. 3) 1992
(No. 170 of 1992)

Tasmanian State Service Amendment (Appeals) Regulations
1993 (No. 56 of 1993)

State Service Act 2000
Act No. 85 of 2000

sch. 3

Tasmanian State Service Amendment Regulations 1993 (No. 188 of 1993)

Tasmanian State Service Amendment (Appeal Period) Regulations 1994 (No. 64 of 1994)

Tasmanian State Service Amendment (Appeals) Regulations 1994 (No. 165 of 1994)

Tasmanian State Service Amendment Regulations 1995 (No. 156 of 1995)

Tasmanian State Service Amendment Regulations 1996 (No. 179 of 1996)

Tasmanian State Service Amendment Regulations 1998 (No. 77 of 1998)

State Service Act 2000
Act No. 85 of 2000

sch. 3

NOTES

The foregoing text of the *State Service Act 2000* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 December 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>State Service Act 2000</i>	No. 85 of 2000	1.5.2001
<i>State Service (Agencies and Heads of Agencies) Order 2002</i>	S.R. 2002, No. 88	9.8.2002
<i>Egg Industry Act 2002</i>	No. 28 of 2002	25.6.2003
<i>Financial Management and Audit Amendment Act 2003</i>	No. 42 of 2003	4.7.2003
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>State Service (Agencies and Heads of Agencies) Order 2004</i>	S.R. 2004, No. 4	2.2.2004
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2005</i>	No. 65 of 2005	15.12.2005
<i>State Service (Agencies and Heads of Agencies) Order 2006</i>	S.R. 2006, No. 10	21.2.2006
<i>State Service (Agencies and Heads of Agencies) Order (No. 2) 2006</i>	S.R. 2006, No. 22	5.4.2006
<i>State Service (Agencies and Heads of Agencies) Order 2008</i>	S.R. 2008, No. 4	12.2.2008
<i>Education and Training (Further Consequential Amendments) Act 2008</i>	No. 45 of 2008	1.1.2009
<i>State Service (Agencies and Heads of Agencies) Order 2009</i>	S.R. 2009, No. 72	1.7.2009
<i>Integrity Commission Act 2009</i>	No. 67 of 2009	1.10.2010
<i>Education and Training (Consequential Amendments and Rescissions) Act 2010</i>	No. 25 of 2010	1.1.2011
<i>Irrigation Company (Consequential Amendments) Act 2011</i>	No. 8 of 2011	1.7.2011
<i>State Service Amendment (Redeployment) Act 2011</i>	No. 18 of 2011	13.7.2011
<i>State Service Amendment</i>	No. 19 of 2011	17.8.2011

State Service Act 2000
Act No. 85 of 2000

sch. 3

Act	Number and year	Date of commencement
<i>(Performance) Act 2011</i>		
<i>Integrity Commission Amendment Act 2011</i>	No. 55 of 2011	22.12.2011
<i>Tasmanian Health Organisations Act 2011</i>	No. 51 of 2011	1.7.2012
<i>Macquarie Point Development Corporation Act 2012</i>	No. 50 of 2012	11.12.2012
<i>State Service Amendment Act 2012</i>	No. 42 of 2012	4.2.2013
<i>Training and Workforce Development (Repeals and Consequential Amendments) Act 2013</i>	No. 11 of 2013	1.7.2013
<i>State Service (Agencies and Heads of Agencies) Order 2014</i>	S.R. 2014, No. 77	1.7.2014
<i>State Service (Agencies and Heads of Agencies) Order 2015</i>	S.R. 2015, No. 25	1.7.2015
<i>State Service (Agencies and Heads of Agencies) Order 2016</i>	S.R. 2016, No. 18	4.4.2016
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>State Service (Agencies and Heads of Agencies) Order 2018</i>	S.R. 2018, No. 24	1.7.2018
<i>Brand Tasmania Act 2018</i>	No. 37 of 2018	29.3.2019
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>State Service Amendment (Validation) Act 2020</i>	No. 35 of 2020	17.11.2020
<i>State Service (Agencies and Heads of Agencies) Order 2021</i>	S.R. 2021, No. 89	26.11.2021
<i>State Service (Agencies and Heads of Agencies) Order (No. 2) 2021</i>	S.R. 2021, No. 90	1.12.2021
<i>TasTAFE (Skills and Training Business) Act 2021</i>	No. 32 of 2021	1.7.2022
<i>State Service (Agencies) Order 2022</i>	S.R. 2022, No. 72	1.10.2022
<i>State Service (Agencies) Order (No. 2) 2022</i>	S.R. 2022, No. 101	1.12.2022
<i>Homes Tasmania (Consequential Amendments) Act 2022</i>	No. 26 of 2022	1.12.2022

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 65 of 2005, Sched. 1, No. 19 of 2011, s. 4, No. 42 of 2012, s. 4 and No. 54 of 2016, s. 104

State Service Act 2000
Act No. 85 of 2000

sch. 3

Provision affected	How affected
Section 7	Amended by No. 19 of 2011, s. 5
Section 10	Amended by No. 42 of 2012, s. 5
Part 4	Substituted by No. 42 of 2012, s. 6
Section 14	Substituted by No. 42 of 2012, s. 6
Section 15	Substituted by No. 42 of 2012, s. 6
Section 16	Substituted by No. 42 of 2012, s. 6
Division 1 of Part 5	Repealed by No. 42 of 2012, s. 6
Section 17	Substituted by No. 42 of 2012, s. 6
Section 18	Amended by No. 67 of 2009, s. 127 Substituted by No. 42 of 2012, s. 6
Section 19	Substituted by No. 42 of 2012, s. 6
Part 5	Substituted by No. 42 of 2012, s. 6
Section 20	Substituted by No. 42 of 2012, s. 6
Section 21	Substituted by No. 42 of 2012, s. 6
Section 22	Repealed by No. 42 of 2012, s. 6
Section 23	Repealed by No. 42 of 2012, s. 6
Section 24	Amended by No. 67 of 2009, s. 128 Subsection (3) inserted by No. 55 of 2011, s. 28 Repealed by No. 42 of 2012, s. 6
Division 2 of Part 5	Repealed by No. 42 of 2012, s. 6
Section 25	Amended by No. 65 of 2005, Sched. 1 Subsection (8A) inserted by No. 65 of 2005, Sched. 1 Subsection (8B) inserted by No. 65 of 2005, Sched. 1 Amended by No. 65 of 2005, Sched. 1 Repealed by No. 42 of 2012, s. 6
Section 26	Repealed by No. 42 of 2012, s. 6
Section 27	Repealed by No. 42 of 2012, s. 6
Section 28	Repealed by No. 42 of 2012, s. 6
Section 29	Amended by No. 42 of 2012, s. 7
Section 31	Amended by No. 65 of 2005, Sched. 1, No. 42 of 2012, s. 8 and No. 54 of 2016, s. 105
Section 31A	Inserted by No. 42 of 2012, s. 9
Section 34	Amended by No. 19 of 2011, s. 6 and No. 42 of 2012, s. 10
Section 36	Amended by No. 42 of 2003, Sched. 1, No. 19 of 2011, s. 7, No. 42 of 2012, s. 11 and No. 4 of 2017, Sched. 1
Section 37	Amended by No. 42 of 2012, s. 12
Section 38	Amended by No. 42 of 2012, s. 13
Section 39	Amended by No. 42 of 2012, s. 14
Section 40	Amended by No. 42 of 2012, s. 15
Section 41	Amended by No. 76 of 2003, Sched. 1 and No. 42 of 2012, s. 16
Section 42	Amended by No. 42 of 2012, s. 17
Section 43	Amended by No. 42 of 2012, s. 18
Section 44	Amended by No. 19 of 2011, s. 8
Section 45	Amended by No. 42 of 2012, s. 19
Section 46	Amended by No. 65 of 2005, Sched. 1, No. 42 of 2012, s.

State Service Act 2000
Act No. 85 of 2000

sch. 3

Provision affected	How affected
	20 and No. 54 of 2016, s. 106
Section 47	Amended by No. 18 of 2011, s. 4 and No. 42 of 2012, s. 21
Section 48	Amended by No. 42 of 2012, s. 22
Section 50	Amended by No. 42 of 2012, s. 23
Section 50A	Inserted by No. 42 of 2012, s. 24
Section 51	Amended by No. 42 of 2012, s. 25
Section 51A	Inserted by No. 19 of 2011, s. 9
Section 51B	Inserted by No. 19 of 2011, s. 9
Section 51C	Inserted by No. 19 of 2011, s. 9
	Amended by No. 42 of 2012, s. 26
Section 52	Amended by No. 42 of 2012, s. 27
Section 53	Amended by No. 42 of 2012, s. 28
Section 54	Amended by No. 4 of 2017, Sched. 1
Section 54A	Inserted by No. 35 of 2020, s. 5
Section 55	Amended by No. 42 of 2012, s. 29
Schedule 1	Substituted by S.R. 2002, No. 88, S.R. 2006, No. 22, S.R. 2009, No. 72, S.R. 2014, No. 77, S.R. 2015, No. 25, S.R. 2018, No. 24 and S.R. 2021, No. 90
Part 1 of Schedule 1	Amended by S.R. 2002, No. 88, S.R. 2004, No. 4, S.R. 2006, No. 22, S.R. 2008, No. 4, S.R. 2009, No. 72, S.R. 2014, No. 77, S.R. 2015, No. 25, S.R. 2016, No. 18, S.R. 2018, No. 24, S.R. 2021, No. 90, S.R. 2022, No. 72 and S.R. 2022, No. 101
Part 2 of Schedule 1	Amended by No. 28 of 2002, Sched. 1, S.R. 2002, No. 88, S.R. 2006, No. 10, S.R. 2006, No. 22, No. 45 of 2008, Sched. 1, No. 67 of 2009, s. 129, S.R. 2009, No. 72, No. 25 of 2010, Sched. 1, No. 8 of 2011, Sched. 1, No. 51 of 2011, Sched. 7, No. 50 of 2012, Sched. 4, No. 11 of 2013, Sched. 1, S.R. 2014, No. 77, S.R. 2015, No. 25, S.R. 2018, No. 24, No. 37 of 2018, Sched. 5, No. 32 of 2021, Sched. 4, S.R. 2021, No. 89, S.R. 2021, No. 90 and No. 26 of 2022, s. 40