

Public Sector Management and Parliamentary Officers (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 1 November 1995

(Brought in by Mr Kennett and Mr McNamara)

A BILL

to amend the **Public Sector Management Act 1992**, the **Parliamentary Officers Act 1975**, the **Ombudsman Act 1973**, the **Parliamentary Salaries and Superannuation Act 1968** and the **Employee Relations Act 1992** and for other purposes.

Public Sector Management and Parliamentary Officers (Amendment) Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The main purposes of this Act are—

- (a) to amend the **Public Sector Management Act 1992** to improve the administration of that Act; and

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

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- (b) to amend the **Parliamentary Officers Act 1975** to make new provisions in relation to the appointment and employment of parliamentary officers; and
- (c) to amend the **Ombudsman Act 1973** in relation to the functions of the Deputy Ombudsman; and 5
- (d) to amend the **Parliamentary Salaries and Superannuation Act 1968**; and
- (e) to make consequential amendments to the **Employee Relations Act 1992**. 10

2. Commencement

- (1) This Act (except section 30 (1)) comes into operation on the day on which it receives the Royal Assent.
- (2) Section 30 (1) is deemed to have come into operation on 16 November 1993. 15

**PART 2—AMENDMENT OF PUBLIC SECTOR
MANAGEMENT ACT 1992**

3. Prerogative office

In section 4 (1) of the **Public Sector Management Act 1992** insert— 20

“**“prerogative office”** means an office under the Crown in right of the State of Victoria (other than a statutory office) to which the right to appoint is vested in the Governor in Council;”.

4. Application of merit provisions to employees 25

- (1) After section 34A (4) of the **Public Sector Management Act 1992** insert—

“(5) Sections 24 and 29 apply to the employment of fixed term employees under this Division.”.

- (2) After section 35 (4) of the Public Sector Management Act 1992 **insert—**

“(5) Section 24 applies to the employment of a person under this section.”.

- (3) After section 35A (1) of the **Public Sector Management Act 1992 insert—**

“(1A) Section 24 applies to the employment of casual employees under this Division.”.

5. Period of notice

- (1) In section 34B (1) of the **Public Sector Management Act 1992** for “the period of notice of termination required by Part 6 of Schedule 1 to the **Employee Relations Act 1992**” **substitute** “4 weeks notice of termination or the period of notice of termination required by Part 6 of Schedule 1 to the **Employee Relations Act 1992** (whichever is the greater)”.

- (2) In section 35 (2A) of the **Public Sector Management Act 1992** for “the period of notice of termination required by Part 6 of Schedule 1 to the **Employee Relations Act 1992**” **substitute** “2 weeks notice of termination or the period of notice of termination required by Part 6 of Schedule 1 to the **Employee Relations Act 1992** (whichever is the greater)”.

- (3) In section 55 (5) of the **Public Sector Management Act 1992** for “the period of notice of termination required by Part 6 of Schedule 1 to the **Employee Relations Act 1992**” **substitute** “4 weeks notice of termination or the period of notice of termination required by Part 6 of Schedule 1 to the **Employee Relations Act 1992** (whichever is the greater)”.

6. Executive officer leave

- (1) In section 49 of the **Public Sector Management Act 1992** (definition of “employment benefit”) paragraph (d) is **repealed**.

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- (2) For section 60 (5) of the **Public Sector Management Act 1992** substitute—

“(5) An executive officer is entitled to be paid an amount equivalent to the cost (calculated in accordance with the regulations (if any)) of a part of any entitlement to take annual or long service leave with pay if the officer forgoes (with the approval of his or her employer) the right to take that part of the leave.”.

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7. Appointment of prerogative officers

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- (1) In section 50 (1) (ba) of the **Public Sector Management Act 1992** after “statutory office” insert “or prerogative office”.

- (2) After section 54 (1) (aa) of the **Public Sector Management Act 1992** insert—

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“(ab) any prerogative office which is a declared authority; and”.

- (3) In section 55 (5) of the **Public Sector Management Act 1992** after “Official Secretary” insert “or the holder of a prerogative office”.

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- (4) After section 63 (3) of the **Public Sector Management Act 1992** insert—

“(4) Despite anything to the contrary in this Act or any other Act, if the holder of a prerogative office is removed from that office or retires from that office, his or her contract of employment in respect of that office is terminated on that removal or retirement.”.

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- (5) After section 81 (5) of the **Public Sector Management Act 1992** insert—

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“(6) Sub-sections (2), (3) and (4) of this section do not apply to the holder of a prerogative office unless the Governor in Council, by Order published in the Government Gazette, declares that sub-section to apply.”.

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- (6) In section 89 (1) of the **Public Sector Management Act 1992** (definition of “authority”) after paragraph (e) **insert—**

“or

(f) a prerogative office.”.

- (7) In section 90 (3) (c) (i) of the **Public Sector Management Act 1992** after “statutory office” **insert** “or a prerogative office”.

- (8) In section 90 (4) of the **Public Sector Management Act 1992** after “statutory office” **insert** “or a prerogative office”.

8. *Salary on return to public sector*

- (1) In section 64 (5) (b) (ii) of the **Public Sector Management Act 1992** for “an Administrative Officer (AM8)” **substitute** “a Victorian Public Service Officer (VPS4)”.

- (2) Despite the amendment of section 64 of the **Public Sector Management Act 1992** by sub-section (1), that section continues to apply in relation to an election made under that section before the commencement of this section as if sub-section (1) had not been enacted.

9. *Excessive salaries*

- (1) For section 79 (2) of the **Public Sector Management Act 1992** **substitute—**

“(2) If an officer is unfit to perform work or incapable of performing work appropriate to the officer’s salary which is available for the officer to perform in the Department, the appropriate Department Head must take such steps as are practicable to secure the officer’s transfer to a vacant position in any other Department at the officer’s existing salary.”.

- (2) In section 79 (3) of the **Public Sector Management Act 1992** **omit** “or the officer is unfit for or incapable

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of performing the work attached to a position referred to in that sub-section”.

10. New section 81AA inserted

After section 81 of the **Public Sector Management Act 1992** insert—

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“81AA. Transfer conditions

- (1) If, under section 81, a Department Head is transferred from a position in one Department to a position of Department Head in another Department, the Department Head and the Minister are, unless the Department Head and the Minister make a new agreement, bound by an individual employment agreement with the same terms and conditions and with the same accrued and accruing entitlements as those that applied to the Department Head immediately before the transfer. 10 15
- (2) If, under section 81, a Department Head is transferred from a position in one Department to a position in another Department (not being a position of Department Head), the former Department Head and the Department Head of the second Department are, unless the former Department Head and the Department Head of the new Department make a new agreement, bound by an individual employment agreement with the same terms and conditions and with the same accrued and accruing entitlements as those that applied to the former Department Head immediately before the transfer. 20 25 30 35
- (3) If an officer (other than a Department Head) is transferred from a position in

5 one Department to a position in another
Department under section 77, 78, 79 or
81 at that officer's existing salary or
remuneration package, that officer and
the Department Head of the second
Department are, unless the officer and
the Department Head make a new
agreement, bound by an individual
employment agreement with the same
10 terms and conditions and with the same
accrued and accruing entitlements as
those that applied to the officer
immediately before the transfer.

- 15 (4) If an officer is transferred from a position
in one Department to a position in
another Department at a reduced salary
under section 78 or 79, that officer and
the Department Head of the second
Department are, unless the officer and
the Department Head make a new
agreement, bound by an individual
employment agreement at that reduced
20 salary but otherwise with the same terms
and conditions and with the same
accrued and accruing entitlements as
those that applied to the officer
immediately before the transfer.”.

11. Application of Employee Relations Act

30 In section 83 of the **Public Sector Management Act
1992**—

- (a) in sub-section (1) after “advisers” **insert**
“, judicial employees under Part 9B”;
- (b) in sub-section (4) (a) after “advisers” **insert**
“and judicial employees under Part 9B”;
- 35 (c) in sub-section (5) after “advisers” **insert** “and
judicial employees under Part 9B”.

12. *New Part 9B inserted*

After Part 9A of the **Public Sector Management Act 1992** insert—

“PART 9B—JUDICIAL EMPLOYEES

95C. *Judicial employees* 5

In this Part “**judicial employee**” means—

- (a) an associate of a Judge of the Supreme Court or County Court; or
- (b) a secretary of a Master of the Supreme Court or the County Court; or 10
- (c) a tipstaff of a Judge of the Supreme Court or County Court.

95D. *Employment of judicial employees* 15

- (1) Subject to the regulations (if any), the appropriate Department Head may employ any person as a judicial employee.
- (2) Section 24 applies to the employment of judicial employees under this Part. 20
- (3) Schedule 4 and the regulations relating to leave of absence and long service leave apply to a judicial employee as if any reference in that Schedule and those regulations to a fixed term employee were a reference to a judicial employee. 25

94E. *Termination of employment as judicial employee*

- (1) The employment of a judicial employee may be terminated at any time by the Department Head giving the employee 30

or the employee giving the Department
Head notice of termination in accordance
with sub-section (2).

(2) The notice must be—

(a) 4 weeks notice of termination or the
period of notice of termination
required by Part 6 of Schedule 1 to
the **Employee Relations Act 1992**
(whichever is the greater); or

(b) such other period of notice as is
agreed between the Department
Head and the employee.

(3) A person who, immediately before his or
her employment under this Part was an
officer, fixed term employee or
temporary employee retains any right to
long service, annual, sick or other leave
accrued or accruing to him or her
immediately before that employment,
including, in the case of a fixed term
employee, any right under section 34B
(3).

(4) A person who immediately before his or
her employment under this Part was an
officer is deemed on the termination of
his or her employment under this Part to
be re-appointed to a position in the
public service with the same
remuneration as the position held by the
person immediately before his or her
employment under this Part.

(5) A person who immediately before his or
her employment under this Part was a
fixed term employee who immediately
before his or her first employment as a
fixed term employee was an officer is
deemed on the termination of his or her
employment under this Part to be
re-appointed to a position in the public

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service with the same remuneration as the position held by the person immediately before his or her first employment as a fixed term employee.

- (6) A judicial employee is not entitled to compensation as a result of the termination of that employee’s employment under this Part.” 5

13. Supreme Court—Limitation of jurisdiction

After section 105 (3) of the **Public Sector Management Act 1992** insert— 10

- “(4) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from entertaining actions for compensation in respect of which this Act, as amended by the **Public Sector Management and Parliamentary Officers (Amendment) Act 1995**, provides that no compensation is payable.”. 15 20

PART 3—AMENDMENT OF PARLIAMENTARY OFFICERS ACT 1975

14. Definitions

In section 3 of the **Parliamentary Officers Act 1975**— 25

- (a) after the definition of “Council” insert—

“**“employee”** means a person engaged under section 12;”;

- (b) in the definition of “Officers of the Parliament” for “under the control” **substitute** “employed in the department”. 30

15. New sections 5 and 6 substituted and 6A inserted

For sections 5 and 6 of the **Parliamentary Officers Act 1975** substitute—

“5. Clerk of the Parliaments

- 5 (1) There is established an office to be known
as the office of the Clerk of the
Parliaments.
- 10 (2) The Governor in Council, on the
recommendation of the President and the
Speaker, may appoint the Clerk of the
Legislative Council or the Clerk of the
Legislative Assembly to hold the office of
the Clerk of the Parliaments.

6. Department heads

- 15 (1) For the purposes of this Act—
- (a) the person for the time being holding
the office of Clerk of the Legislative
Council is the department head of the
department of the Legislative Council;
- 20 (b) the person for the time being holding
the office of Clerk of the Legislative
Assembly is the department head of
the department of the Legislative
Assembly;
- 25 (c) the person for the time being holding
the office of Librarian is the
department head of the department of
the Parliament Library;
- 30 (d) the person for the time being holding
the office of Chief Reporter of the
Victorian Parliamentary Debates is
the department head of the department
of the Reporting Staff of the *Victorian
Parliamentary Debates*;
- 35 (e) the person for the time being holding
the office of Secretary of the House
Committee is the department head of

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the department of the House
Committee;

- (2) The Governor in Council, on the recommendation of—
 - (a) the President, may appoint a person to a vacant office of Clerk of the Legislative Council; 5
 - (b) the Speaker, may appoint a person to a vacant office of Clerk of the Legislative Assembly; 10
 - (c) the President and the Speaker, may appoint a person to any other vacant office of department head.
- (3) The Governor in Council may, on the recommendation of the President and the Speaker, from time to time determine the remuneration payable to a department head other than the Clerk of the Legislative Council and the Clerk of the Legislative Assembly. 15
- (4) The remuneration determined under this section in relation to an office of department head must be equivalent to the remuneration that may be attached to offices or positions of equivalent work value in the public service. 20

6A. *Offices in a department*

- (1) The President, on the recommendation of the relevant department head—
 - (a) may create, abolish or otherwise deal with any office in the department of the Legislative Council, the department of the Parliament Library or the department of the Reporting Staff of the *Victorian Parliamentary Debates*, other than an office of department head; and 30

(b) must determine the work value and remuneration applicable to each office created under paragraph (a).

(2) The Speaker, on the recommendation of the relevant department head—

(a) may create, abolish or otherwise deal with any office in the department of the Legislative Assembly or the department of the House Committee, other than an office of department head; and

(b) must determine the work value and remuneration applicable to each office created under paragraph (a).

(3) The remuneration determined under this section in relation to an office in a parliamentary department must be equivalent to the remuneration that may be attached to offices or positions of equivalent work value in the public service.”.

16. New section 7 substituted

For section 7 of the **Parliamentary Officers Act 1975** substitute—

“7. Appointment of officers

(1) An appointment to an office in the department of the Legislative Council, the department of the Parliament Library or the department of the Reporting Staff of the *Victorian Parliamentary Debates*, other than an office of department head, must be made by the President, on the recommendation of the relevant department head.

(2) An appointment to an office in the department of the Legislative Assembly

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or the department of the House Committee, other than an office of department head, must be made by the Speaker, on the recommendation of the relevant department head.

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(3) If the Speaker or the President does not accept a recommendation made by a department head, the Speaker or President may request the relevant department head to make another recommendation.

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(4) If the relevant department head does not make another recommendation within the time required by the Speaker or the President, an appointment may be made under sub-section (1) without that recommendation.”.

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17. New section 8 substituted

For section 8 of the **Parliamentary Officers Act 1975** substitute—

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“8. Which persons are to be recommended for appointment?”

(1) The person recommended for appointment to an office of the Parliament under section 7 must be the person who, in the opinion of the person recommending the appointment, is best qualified for the appointment and entitled to the appointment on the basis of merit taking into account—

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(a) the extent to which each applicant has skills, knowledge, aptitude and experience relevant to the requirements of the office; and

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(b) diligence and good conduct; and

(c) where relevant, the performance of each applicant in relation to the functions of any positions,

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employment or occupation previously
held or engaged in by the applicant.”.

18. *Appointment of officer of public service*

In section 9 of the **Parliamentary Officers Act 1975**
omit “ any other department of”.

19. *New section 10 substituted*

For section 10 of the **Parliamentary Officers Act 1975** substitute—

“10. *Transfer of officer to public service*

(1) If any officer of the Parliament is transferred to a position in the public service, the Public Service Commissioner may determine all questions relating to the remuneration of the officer and the work value of the position to which the officer is transferred.

(2) A determination under sub-section (1) must not in any manner affect, take away alter or diminish any right, accrued or accruing to that officer at the time of his or her appointment to an office of the Parliament or which may have been acquired by him or her during his or her continuance in that office.”.

20. *New section 11 substituted*

For section 11 of the **Parliamentary Officers Act 1975** substitute—

“11. *No officer to be dismissed except under Act*

(1) An officer of the Parliament must not be dismissed or subjected to any other

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penalty in respect of his or her service as an officer except for the causes and in the manner set out in this Act or the regulations.

- (2) If an office is abolished under section 6A, nothing in sub-section (1) prevents the services of an officer of the Parliament being dispensed with in consequence of that abolition.” 5

21. Temporary employment 10

In section 12 of the **Parliamentary Officers Act 1975** for “, the House Committee or the Parliamentary Offices Committee” (where twice occurring) **substitute** “or the House Committee”.

22. New sections 12A, 12B, 12C, 12D and 12E inserted 15

After section 12 of the **Parliamentary Officers Act 1975** insert—

“12A. Delegation

- (1) The President may by instrument delegate to a department head any of his or her powers, duties or functions under this Act or the regulations other than a power under section 13 to recommend the making of regulations or this power of delegation. 20
- (2) The Speaker may by instrument delegate to a department head any of his or her powers, duties or functions under this Act or the regulations other than a power under section 13 to recommend the making of regulations or this power of delegation. 25 30

12B. *Application of Employee Relations Act 1992*

- (1) The **Employee Relations Act 1992** applies to officers of the Parliament and to employees.
- (2) Officers of the Parliament and employees are employees within the meaning of that Act.
- (3) Despite sub-section (1), section 48 (a) of the **Employee Relations Act 1992** does not apply in relation to officers of the Parliament and employees.
- (4) Clause 1 (c) of Schedule 1 of the **Employee Relations Act 1992** applies in relation to officers of the Parliament and employees as if any reference to an award were a reference to the provisions referred to in clause 22 (1) of Schedule 6 to the **Public Sector Management Act 1992**.
- (5) In determining for the purposes of the **Employee Relations Act 1992** whether a term or condition of an employment agreement is less favourable than the minimum applicable, regard must be had to the whole remuneration package, including employment benefits, and not just the amount of remuneration payable in money.

12C. *Legal proceedings not to be brought in respect of appointment*

- (1) Despite anything to the contrary in the **Employee Relations Act 1992**, any question concerning or arising from the appointment of, or failure to appoint, a person to an office of the Parliament or the entitlement or non-entitlement of a person to be appointed to an office of the

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| <p>Parliament or the validity or invalidity of any such appointment is not an industrial matter within the meaning of that Act and any dispute, or any threatened, probable or impending dispute concerning, or arising from, anything to do with any such question is not an industrial dispute within the meaning of that Act.</p> | 5 |
| <p>(2) Sub-section (1) applies whether or not any person has been appointed to a vacant office.</p> | 10 |
| <p>(3) Proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief do not lie in respect of the appointment of, or the failure to appoint, a person to an office of the Parliament, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.</p> | 15

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| <p>(4) Sub-section (3) does not affect the operation of sections 13 (4), 14, 15, 16 or 16A or the regulations dealing with personal grievances or disciplinary matters.</p> | 25 |

12D. *Choice of procedure*

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| <p>Despite anything to the contrary in any Act, if circumstances giving rise to a right of review under this Act or the regulations would also give rise to a right of complaint under the Equal Opportunity Act 1995, an officer of the Parliament may exercise only one of those rights.</p> | 30

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12E. Supreme Court—Limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from—

- (a) entertaining applications for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief where those applications are prohibited by this Act; or
- (b) entertaining any action relating to a complaint under the **Equal Opportunity Act 1995** where a person has chosen another avenue of review in relation to that matter under section 12D of this Act.”.

23. Regulations

(1) In section 13 (1) of the **Parliamentary Officers Act 1975**—

(a) for “, the Speaker, the Library Committee, the House Committee or the Parliamentary Offices Committee (as the case may be)” **substitute** “and the Speaker”;

(b) for paragraphs (a) and (b) **substitute**—

“(a) the duties to be performed by officers of the Parliament and employees;

(b) providing for procedures for dealing with personal grievances (including empowering the President or the Speaker to appoint a Tribunal) in relation to decisions made under this Act or the regulations;

(ba) specifying what matters constitute personal grievances for the purposes of this Act and the regulations;

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- (bb) the remuneration of the Tribunal and the terms and conditions of appointment of the Tribunal;”;
- (c) in paragraph (c) for “such officers” **substitute** “officers of the Parliament or employees”; 5
- (d) for paragraph (d) **substitute—**
 - “(d) regulating the procedures for handling disciplinary matters in relation to officers of the Parliament and employees including hearings, appeals and the imposition of penalties which may include fines (not exceeding 40 penalty units), reduction in salary or position or both, suspension or dismissal; 10
 - (da) providing for disciplinary action (including the imposition of penalties which may include fines (not exceeding 40 penalty units), reduction in salary or position or both, suspension or dismissal) which may be taken in respect of an officer of the Parliament or employee who has been found guilty of an offence punishable by imprisonment;” 15
- (2) For section 13 (2) of the **Parliamentary Officers Act 1975** **substitute—** 25
 - “(2) Regulations under sub-section (1) may be made—
 - (a) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and 30
 - (b) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.” 35

(3) In section 13 (3) of the **Parliamentary Officers Act 1975** for “classification” **substitute** “work value or remuneration of an office of the Parliament”.

(4) Subject to section 26 (3), until regulations in relation to personal grievances and discipline are first made under section 13 of the **Parliamentary Officers Act 1975** as amended by this Act, Parts 11 and 12 of the Public Sector Management Regulations 1993 (with any necessary modifications) apply to officers of the Parliament (other than department heads) and employees as if—

(a) regulations 25.2, 25.9, 25.10 (d), 27, 30.3 (b), 35 and 36 of those regulations were omitted; and

(b) in regulation 30.3 (c) of those regulations after “staff member” there were inserted “(including a department head)”;

(c) any reference in those Parts to—

(i) a Department Head were a reference to a department head under this Act; and

(ii) a Department were a reference to a department under this Act; and

(iii) a staff member were a reference to an officer of the Parliament (other than a department head) or an employee; and

(iv) except in regulation 34.1 (a) (iii), the Public Service Commissioner were a reference to—

(A) the President, in relation to any matter concerning an officer of the department of the Legislative Council, the department of the Parliament Library or the department of the Reporting Staff of the *Victorian Parliamentary Debates*;

(B) the Speaker, in relation to any matter concerning an officer of the department of the Legislative Assembly or the department of the House Committee; and

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- (v) “the Act” were a reference to the **Parliamentary Officers Act 1975**; and
- (vi) “these Regulations” were a reference to the regulations made under the **Parliamentary Officers Act 1975**; and 5
- (vii) “the public service”—
 - (A) in regulations 41 and 42A were a reference to “the Parliament”; and
 - (B) in regulation 43 were a reference to “an office of the Parliament or as an employee”; 10
- (viii) “section 103 of the Act” were a reference to section 12D of this Act.

24. New sections 14, 15 and 16 substituted and 16A inserted

For sections 14, 15 and 16 of the **Parliamentary Officers Act 1975** substitute— 15

“14. Conduct of department head

- (1) If, in the opinion of the relevant Presiding Officer, a department head has engaged in conduct which renders the department head unfit to continue as an officer of the Parliament, the relevant Presiding Officer— 20
 - (a) must report the department head to the Governor in Council; and 25
 - (b) may suspend the department head from duty.
- (2) In this section “**relevant Presiding Officer**” means—
 - (a) the President, in the case of the Clerk of the Legislative Council; 30
 - (b) the Speaker, in the case of the Clerk of the Legislative Assembly;
 - (c) the President and the Speaker, in the case of any other department head. 35

15. Board of Inquiry

(1) If—

(a) a department head has been reported to the Governor in Council; and

(b) the department head does not admit in writing the truth of the charges made against him or her—

the Governor in Council may appoint a Board of Inquiry to inquire as to the truth of the charges.

(2) A Board of Inquiry appointed under this section shall consist of—

(a) the Attorney-General or his or her nominee; and

(b) a member nominated by the Premier; and

(c) a member nominated by the Leader of the Opposition; and

(d) a member nominated by the Leader of the Third Party.

(3) The Board of Inquiry must—

(a) conduct a hearing into the charges; and

(b) report its findings to the Governor in Council.

(4) The members of the Board of Inquiry may receive and examine evidence on oath.

(5) The Board of Inquiry is bound by the rules of natural justice.

16. Decision of Governor in Council on charges

(1) If, under section 15—

(a) the department head admits the truth of the charges; or

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- (b) the Board of Inquiry reports that the charges have been proved to its satisfaction—
- the Governor in Council may according to the nature of the offence— 5
- (c) dismiss the department head; or
- (d) reduce the department head to a lower position; or
- (e) reduce the department head's remuneration; or 10
- (f) deprive the department head of the whole or any part of any future annual increment; or
- (g) deprive the department head of any part of his or her leave of absence. 15
- (2) Unless the Governor in Council otherwise orders, a department head who is dismissed under this section forfeits all remuneration payable to the department head during any period of suspension under section 14 preceding that dismissal. 20
- (3) A suspension imposed under section 14 must be immediately removed by the Governor in Council if the Board of Inquiry reports that the charges giving rise to the suspension have not been proved. 25

16A. Incapacity of department head

- The Governor in Council, on the recommendation of a Board of Inquiry appointed in accordance with section 15, may dispense with the services of a department head if— 30
- (a) the department head is at any time found to be unfit to discharge the duties of his or her office or to be 35

inefficient in or incapable of the
prompt and effective discharge of
his or her duties; and

(b) the unfitness, incapacity or
inefficiency is likely to be of a
permanent character.”.

25. Repeal of sections 20 and 21

Sections 20 and 21 of the **Parliamentary Officers
Act 1975** are repealed.

26. Transitional

(1) A person holding an office of the Parliament
immediately before the commencement of this
section must, on that commencement, be taken to
hold the same office on the same terms and
conditions, and with the same classification and
accrued and accruing entitlements as applied to that
person immediately before that commencement.

(2) A person who immediately before the
commencement of this section was temporarily
employed under section 12 of the **Parliamentary
Officers Act 1975** by the Parliamentary Offices
Committee is deemed on that commencement to be
temporarily employed on the same terms under that
section by the House Committee.

(3) Sections 14, 15 and 16 of the **Parliamentary
Officers Act 1975** as in force immediately before the
commencement of this section continue to apply with
respect to charges laid before that commencement.

PART 4—AMENDMENT OF OMBUDSMAN ACT 1973

27. Acting appointments

(1) In section 6 (1) of the **Ombudsman Act 1973** after
“suspension” insert “or during any vacancy in the
office”.

- (2) In section 6C (1) of the **Ombudsman Act 1973** after “absence” **insert** “or during any vacancy in the office”.
- (3) After section 6C (3) (b) of the **Ombudsman Act 1973 insert—**
- “or
- (c) on the appointment of a Deputy Ombudsman to the vacancy.”.

5

28. New section 6F inserted

After section 6E of the **Ombudsman Act 1973 insert—**

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“6F. *Ombudsman may perform functions of Deputy Ombudsman*

The Ombudsman has all the responsibilities, powers, authorities and duties and may perform all the functions of the Deputy Ombudsman during any period in which—

15

- (a) there is a vacancy in the office of Deputy Ombudsman; and
- (b) an Acting Deputy Ombudsman has not been appointed.”.

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**PART 5—AMENDMENT OF PARLIAMENTARY SALARIES
AND SUPERANNUATION ACT 1968**

29. Amendment of reference to Parliamentary Secretary

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In section 7 (4) of the **Parliamentary Salaries and Superannuation Act 1968** for “Parliamentary Secretary to the Cabinet” **substitute** “Parliamentary Secretary of the Cabinet”.

**PART 6—AMENDMENT OF EMPLOYEE RELATIONS
ACT 1992**

30. Amendment of section 7 of Employee Relations Act 1992

- 5 (1) In section 7 (4) of the **Employee Relations Act 1992**,
after “employees” **insert** “and Ministerial officers
and Parliamentary advisers”.
- (2) In section 7 (4) of the **Employee Relations Act 1992**,
after “advisers” **insert** “and judicial employees”.
- 10 (3) After section 7 (4) of the **Employee Relations Act
1992 insert—**
“(4A) Subject to section 12B of the **Parliamentary
Officers Act 1975**, this Act also applies to an
officer of the Parliament within the meaning of
that Act and any person employed under
15 section 12 of that Act.”.
- (4) In section 7 (5) of the **Employee Relations Act 1992**
after “sub-section (4)” **insert** “or (4A)”.

