

# CLAUSE NOTES

## STATE SERVICE AMENDMENT BILL 2012

### PART 1 - PRELIMINARY

#### Clause 1: Short Title

This provides the short title to be used when citing the Act for any legal purpose.

#### Clause 2: Commencement

The Clause provides for commencement on the day the Act is proclaimed.

### PART 2 – *STATE SERVICE ACT 2000* AMENDED

#### Clause 3: Principal Act

The Principal Act, which this part of the Bill amends, is the *State Service Act 2000*.

#### Clause 4 – Section 3 amended (Interpretation)

This Clause amends section 3 of the Principal Act by:

(a) Inserting the definition of Auditor-General

This Subclause adds a definition of the Auditor-General.

(b) Removing definition of State Service Commissioner and Commissioner's Directions

The office of the State Service Commissioner is abolished with the Commissioner's functions being undertaken by the Employer, the Head of the State Service, the Tasmanian Industrial Commission and the Auditor-General as detailed in the following amendments. This clause also provides for the removal of Commissioner's Directions which are replaced by Employment Directions.

(c) Inserting the definition of Employer

This Subclause defines the Employer of State Services employees and officers as the Minister administering the *State Service Act 2000*, and defines Employment Directions that replace present Commissioner's and Ministerial Directions.

(d) *Inserting definition of Head of the State Service*

This Subclause provides for the Head of the State Service. This is a newly defined role in the Act in Section 20.

(e) *Omitting the definition of Ministerial Directions*

This Clause removes the definition of Ministerial Directions which, along with Commissioner's Directions, are replaced by Employment Directions.

(f) *Subclause (f) provides for a punctuation change*

(g) *Inserting definition of the Tasmanian Industrial Commission*

This Subclause adds a definition of the Tasmanian Industrial Commission.

(h) *Removing reference to Commissioner's Directions and Ministerial Directions, and removing reference to Commissioner's Directions*

This Clause removes reference to Commissioner's Directions and Ministerial Directions, and replaces with reference to Employment Directions. Reference to Section 20 is deleted from the Clause as this Clause previously dealt with Commissioner's Directions.

Clause 5 –Section 10 amended (Breaches of Code of Conduct)

This Clause amends Section 10 of the Act by removing reference to the State Service Commissioner and replacing it with the Employer. Section 10 of the Act until now provided for the State Service Commissioner rather than the Employer to establish procedures for the investigation and determination of the whether an employee has breached the Code of Conduct.

Section 10 will also provide that an employee or officer cannot be victimised, or discriminated against because they have reported a breach to the Employer, Head of Agency or Integrity Commission.

Clause 6 – Part 4 and 5 substituted (Part 4 Powers of the Minister, and Part 5 State Service Commissioner)

This provides for the substitution of Parts 4 and 5 of the *State Service Act 2000*, which specified the Powers of the Minister and the State Service Commissioner respectively. Under the new governance arrangements the Minister administering the State Service Act is the Employer. The role of the Tasmanian State Service Commissioner is abolished and the employer related administration functions and powers of the Commissioner are transferred to the Employer, the performance and examination of the Employer's functions and powers sit with the Auditor-General and the Tasmanian Industrial Commission is vested with powers to undertake employee reviews of State Service.

#### Part 4 – THE EMPLOYER

Section 14 defines the Employer.

Section 15 (1) provides for the Employer to have the functions which previously were held by the State Service Commissioner as outlined in section 15(1)(a) to (j).

Section 15(2) provides that the Employer in undertaking these functions must act according to equity and good consciousness and in a manner that is consistent with the provisions of this Act.

Section 15(2) also provides that the Employer must keep a record of all employees showing such details as are prescribed.

Section 16(1) provides the powers that previously sat with the State Service Commissioner to be undertaken by the Employer to be able to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of the Employer functions under this Act.

Section 16(2) provides for the Employer to be able to conduct investigations as the Employer considers necessary for the purposes of this Act. It also provides for the Employer to conduct his/her own investigation and refer matters to other bodies, as well as disclose information to the Integrity Commission.

Section 17(1) provides for the Employer to issue, vary and revoke Employment Directions.

Section 17(2) provides for the application of the Employment Directions.

Section 17(3) defines the term "specified" in Section 17.

Section 17(4) defines Employment Directions as statutory rules within the meaning of the *Rules Publication Act 1953*.

Part 4 Section 17(5) provides that all Ministerial Directions and Commissioner's Directions in force immediately before the commencement of this Act remain in force until they are revoked by the Employer.

Part 4 Section 18(1) provides for the Employer to be able to request the Auditor-General to conduct investigations into any matters which relate to the administration or management of the State Service.

Part 4 Section 18(2) provides for the Auditor-General with the necessary access to officers and employees of State Services Agencies to be able to undertake these investigations.

Sections 18(3) and (4) provides for the Auditor-General to examine the performance in relation to the functions and powers executed by the Employer. The Auditor-General is to include these examinations in his Annual Plan under the *Audit Act 2008* (Section 11).

Section 19 provides for the Employer to report to both Houses of Parliament each year on the performance or exercise of the Employer's functions or powers during the preceding 12 months. Previously the State Service Commissioner reported to Parliament.

#### Part 5 – HEAD OF THE STATE SERVICE

Part 5 Section 20 provides for the appointment by the Premier of a Head of the State Service. This person must be someone holding an office specified in Column 2 Schedule 1 of the *State Service Act 2000*, that is, a Head of Agency. The Head of the State Service is to perform and exercise the functions and powers of the Employer. Anything done by the Head of the State Service is taken to be done by the Employer.

Section 21 provides for the officer appointed to Head of the State Service, to be able to delegate functions and powers but not the power of delegation.

## Clause 7 – Section 29 amended (Creation of certain offices of Head of Agency and Senior Executive)

Section 29 of the Act provides for the creation of offices of Heads of Agencies and senior executives, and provides for the Premier to create an office where it has been determined that the duties are of a senior executive nature or equivalent.

This Clause amends Section 29(4) by making the Employer, rather than the State Service Commissioner, the person who makes the determination that the duties are of a senior executive nature or equivalent.

## Clause 8 – Section 31 amended (Appointment, &., of officers)

Subclause (a) amends Section 31(10) by replacing reference to the Ministerial and Commissioner's Directions with Employment Directions.

Subclause (b) provides for Officers who were previously appointed as a permanent employee under this Act, and who either have their appointment as an Officer not renewed or terminated, to be able to elect to be reappointed as a permanent employee. This provision exists currently under the Act in Section 38 and addresses a present day anomaly. Clause 13 (b) of this Bill omits reference to these provisions under Section 38 (4) to (7), and subclause 8 inserts these clauses into Section 31 (11) to (14).

In moving these provisions reference is made only to Officer, and reference to appointment of "a specified term or for the duration of a specified task" is deleted as all Officers are appointed for a specified term under Sections 29 and 30.

## Clause 9 – Section 31A inserted (Appointments under other Acts)

Clause 9 provides for Premier to be able to appoint all office holders to offices under this Act where this Act or another Act so requires.

## Clause 10 – Section 34 amended (Functions and powers of Heads of Agencies)

Section 34 of the Act prescribes the functions and powers of Heads of Agencies, subject to Ministerial Directions and Commissioner Directions. The functions of Heads of Agencies are summarised as: to ensure that the Agency is operated effectively, efficiently and economically as is practical, and to determine the duties to be performed by employees, allocate and vary duties of positions and employees, assign classifications to the duties, ensure services of the employees are used effectively and efficiently as practical, to develop workplace diversity programs, assist employees to undertake training, education and development programs, and to develop internal grievance resolution systems.

Clause 10 amends Section 34 by omitting reference to Ministerial Directions and Commissioner's Directions and replacing with Employment Directions.

Clause 10 also clarifies that the Head of Agency responsibilities relating to workplace diversity is limited to his/her Agency.

Clause 11 – Section 36 amended (Annual Reports by Heads of Agencies)

Clause 11 provides for each Head of Agency to report each year to the Head of the State Service on the employment of persons under this Act, in a format and timeframe for reporting approved by the Head of the State Service.

Clause 12 – Section 37 amended (Appointment and Promotion of employees)

Clause 12 replaces reference to the State Service Commissioner and the Minister with the Employer.

Clause 13 – Section 38 (Terms and Conditions of Employment of employees)

Clause 13 replaces Minister with Employer.

It also omits subsections (4), (5), (6) and (7) which is inserted in Section 31 by Clause 8 of this Bill.

Clause 14 – Section 39 amended (Procedures for Appointments and Promotions)



Subclauses 14(a) and (b) substitutes reference to the Commissioner and Commissioner's Directions with the Employment Directions in Section 39(1).

Subclause 14(c) substitutes Minister for Employer in Section 39(4).

Subclauses 14(d) and (e) substitutes the Commissioner with the Tasmanian Industrial Commission which has responsibility for Tasmanian State Service Reviews under Section 50.

Clause 15 – Section 40 amended (Request by Head of Agency to promote permanent employees without advertising)

Clause 15 substitutes Commissioner with Employer and Commissioner's Directions with Employment Directions in Section 40(1).

Clause 15 substitutes Commissioner with Tasmanian Industrial Relations Commission in Section 40(3).

Clause 15 also amends Sections 40(4) by substituting Commissioner for Tasmanian Industrial Relations Commission where a review has been determined, and replaces Commissioner with Employer so that Employer's power to exercise discretion to fill a position without advertising the relevant duties is not exercised.

Clause 16 – Section 41 amended (Voluntary transfers between Agencies)

Clause 16 substitutes Commissioner's Directions with Employment Directions.

Clause 17 – Section 42 amended (Compulsory transfer between Agencies)

Subclauses 17(a) to (c) replaces references to Minister with the Employer.

Subclause 17(d) removes reference to the Minister delegating this power, as Clause 6 - Part 4 Section 21(a) of this Bill already provides for the Head of the State Service to delegate the Employer powers under this Act.

Clause 18 – Section 43 amended (Suspension)

Clause 18 substitutes reference to regulations with Employment Directions.

Clause 19 – Section 45 amended (Termination of employment of fixed-term employees)

Subclause 19(a) replaces Minister with Employer.

Subclause 19(b) removes reference to the Minister delegating this power, as Clause 6 - Part 4 Section 21(a) of this Bill already provides for the Head of the State Service to delegate the Employer powers under this Act.

Clause 20 – Section 46 amended (Arrangements relating to secondment of persons)

Clause 20 replaces reference to the Commissioner with Employer.

Clause 21 – Section 47 amended (Redeployment)

Clause 47 replaces reference to the Commissioner with Employer.

Clause 22 – Section 48 amended (Inability of employees to perform duties)

Clause 23 substitutes reference to the Minister and the Commissioner and replaces with Employer.

## Clause 23 – Section 50 amended (Review of Actions)

Section 50 provides for employees to make application to review to the Commissioner.

Subclause 23(a) omits reference to the Commissioner and Commissioner Directions and provides for applications for review to be made to the Tasmanian Industrial Commission.

Subclause 23(b) removes the note that “disputes in relation to the decision to terminate employment are to be dealt with by the appropriate industrial tribunal” and subclause 23(c) inserts this note as section 50(4) with the clarification that this be in accordance with the legislation under which that Tribunal is established.

## Clause 24 – Section 50(A) inserted (Relationship with Ombudsman and other persons)

Subclause 24 inserts a new section that provides that 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 Commission, or any other person or body that may be prescribed, until the matter has been dealt with.

## Clause 25 – Section 51 amended (Determination of reviews)

Section 51 provides for the State Service Commissioner to make a determination of a review, and to determine the procedures for that review.

Clause 25 (see Section 51(1)) provides that the Tasmanian Industrial Commissioner is to determine the procedures for reviews.

Subclause 25(a) (see Section 51(1) (a)) provides for timeframes for an employee to make an application for review to be as prescribed by regulation. The role of the Tasmanian Industrial Commission does not extend to setting timeframes for employees to lodge applications for review with the Tasmanian Industrial Commission after a decision has been made. Timeframes were previously determined by the Commission through Commissioner’s Directions.

Subclause 25(b) to (k) substitutes the State Service Commissioner with the Tasmanian Industrial Commission.

Subclause 25(l) inserts a new Section 51(8) to provide for the Tasmanian Industrial Commission to report to Parliament each year on the performance of its functions and exercise under this Act. Previously the State Service Commissioner reported to Parliament on the review functions.

Clause 26 – Section 51C amended (Underperformance, &c., of officer or employee)

Clause 26 omits reference to Minister and replaces with the Employer, and omits Ministerial Directions and replaces with Employment Directions.

Clause 27 – Sections (53) amended (Public notification)

Clause 27 omits reference to the Commissioner and provides for the Employer to set the period within which such notices should appear.

Clause 28 –Section 53 amended (Holidays)

Clause 28 omits reference to Minister, and replaces Minister with Employer.

Clause 29 – Section 55 amended (Regulations)

Subclause 29(b) omits the establishment of the review panels, and the review function now rests with the Tasmanian Industrial Commission.

Subclause 29(c) also omits reference to the Minister and State Service Commissioner in Section 55(4) and replaces with the Employer.

## PART 3 - *AUDIT ACT 2008* AMENDED

Clause 30 –Principal Act

The Principal Act, which this part of the Bill amends, is the *Audit Act 2008*.

Clause 31 – Section 4 amended (Interpretation)

Clause 31 provides a definition of Employer under the State Service Act in Section 4(1).

Clause 32 – Section 12 amended (Application of *State Service Act 2000*)

Clause 32 provides for the Auditor-General to be able to investigate any matters which relate to the administration or management of the State Service, referred to Auditor-General by the Employer under Clause 6 of this Bill (Section 18 of the *State Service Act 2000*).

Clause 33 - Section 23 amended (Examinations and investigations)

Clause 34 adds Section 23(1)(g) and enables the Auditor-General to examine the performance and exercise of the Employer's functions and powers as outlined in the *State Service Act 2000*.

Clause 34 – Section 26C inserted (Investigations)

Clause 34 provides for the addition of Section 26(c) which cross references to the investigation powers requested by the Employer under the State Service Act.

Clause 35 – Section 30 amended (Report on Examination and Investigations)

Clause 35 amends Section 30(2) to enable the Auditor-General to refer report findings to the Employer where appropriate.

#### PART 4 – *INDUSTRIAL RELATIONS ACT 1984*

Clause 36 – Principal Act

The Principal Act, which this part of the Bill amends, is the *Industrial Relations Act 1984*.

Clause 37 – Section 5 amended (Constitution of the Commission)

Clause 37 provides for a minimum of 2 Members of the Commission - one being the President and, the other being the Deputy President. This also provides for additional Commissioners as outlined in Section 10(a). Clause 37 also provides for the appointment of a Commissioner who has demonstrated understanding of public sector administration.

Clause 38 – Section 10 amended (Substitution to act during absence of certain commissioners)

Clause 38 removes the requirement that a person shall not be appointed to the office of a Commissioner if he has attained the age of 65 years nor continue to act in that office after he has attained that age.

Clause 39 – Section 10A inserted (Additional Commissioners)

Clause 39 provides for an additional Section 10(a) to appoint additional Commissioners when required. Such Commissioners may be appointed from other jurisdictions for example, where a Full Bench is to be established.

Clause 40 – Section 15 amended (General Functions and powers of President)

Clause 40 provides the powers for Commissioners to hear an application for review under section 50 of the *State Service Act 2000*.

Clause 41 – Section 19AA inserted (Commissioner to review matters under section 50 of the *State Service Act 2000*)

Clause 41 provides that the Commission is to review a matter where an application for review has been made to it under Section 50(1) of the *State Service Act 2000*. It also provides that Commission may refer any matter in relation to these applications to the Ombudsman, the Integrity Commission or the Anti-Discrimination Commissioner or any other person or body that may be prescribed in the regulations.

It also provides that a person making application under Section 50(1) is not entitled to make an application to the Full Bench of the Commission.

Clause 42 – Section 29 amended (Hearings for settling disputes)

Clause 42 replaces the “by the State Service Commissioner under section 24(2) of the *State Service Act 2000*”, with “by the Employer under section 16(2)(b) of the *State Service Act 2000*”.

## PART 5 – INTEGRITY COMMISSION ACT 2009

Clause 43 – Principal Act

The Principal Act, which this part of the Bill amends, is the *Integrity Commission Act 2009*.

Clause 44 – Section 4 amended (Interpretation)

Clause 44 removes reference to the State Service Commissioner who was a member of the Integrity Entity.

Clause 45 – Section 14 amended (Member of Board)

Clause 45 removes reference to the State Service Commissioner as a member of the Integrity Commission Board.

## PART 6 - MISCELLANEOUS

Clause 46 - Legislation Repealed

This Act will be repealed on the three hundred and sixty fifth day from the day on which it commences.