

**Powers and functions held by the Commissioner for Public Administration under the
Public Sector Management Act 1994, Public Sector Management Standards 2006, and Enterprise Agreement 2010–2011**

(references to the Commissioner have been **highlighted** in column A for ease of reference only)

Public Sector Management Act 1994

Column A <i>Section / Authority</i>	Column B <i>Power / Function</i>	Column C <i>Potential to Delegate</i>	Column D <i>Status</i>	Column E <i>Suggested action</i>
20(1) The Commissioner shall - (a) advise the Chief Minister on the management of the service as a whole; and (b) exercise any other functions given to the Commissioner by this Act or any other law. (General functions)	Role of Commissioner.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
21(2) Subject to subsection (3), the Commissioner , with the approval of the Chief Minister, may authorise management reviews to be undertaken in relation to— (a) the service or a part of the service; or (b) the functions of the service or a part of the service; or (c) the possible variation of the functions referred to in paragraph (b) including the addition of functions to the service or a part of the service. (Review of government agencies or functions)	Authorise management reviews.	Power – may be delegated under s.36B	Not delegated	Retain power – do not delegate
21(3) If a proposed review would relate to the Legislative Assembly secretariat, the Commissioner may , with the approval of the Speaker, undertake the review. (Review of government agencies or functions)	Undertake review of the Legislative Assembly secretariat.	Power – may be delegated under s.36B	Not delegated	Retain power – do not delegate
21(4) The Commissioner must notify the head of service and the relevant agency manager in writing before starting the review. (Review of government agencies or functions)	Notify the head of service and relevant agency manager of the review.	Function – may be delegated under s.36B	Not delegated	Retain power – do not delegate

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21(5) On completion of the review, the Commissioner may make recommendations to the head of service and the relevant agency manager on the action that should be taken, or could be taken, to give effect to any proposals arising from the review. (Review of government agencies or functions)	Make recommendations to the head of service and the agency manager.	Power – may be delegated under s.36B	Not delegated	Retain power – do not delegate
21(7) The Commissioner shall , from time to time, report to the Chief Minister on the operation of this section. (Review of government agencies or functions)	Report to the Chief Minister.	Power – may be delegated under s.36B	Not delegated	Retain power – do not delegate
22(1) The Commissioner may , for the purpose of carrying out the Commissioner’s functions- (a) conduct inspections of, or make inquiries or investigations into the operations of, government agencies; and (b) enter premises occupied by a government agency at any time. (Investigative powers of Commissioner)	Conduct inspections, make inquiries or undertake investigations.	Power – may be delegated under s.36B	Not delegated	Retain power – do not delegate
22(2) For an inspection, inquiry or investigation, the Commissioner , or a person authorised in writing by the Commissioner, may , by written notice given to a person, require the person to appear before the Commissioner , at a stated time and place, to do either or both of the following: (a) to give evidence; (b) to produce a stated document or other thing relevant to the inspection, inquiry or investigation. (Investigative powers of Commissioner)	Require a person to appear for the Commissioner.	Power – may be delegated under s.36B	Not delegated	Retain power – do not delegate

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<p>22(3) The Commissioner may require a witness appearing before the Commissioner to give evidence for an inspection, inquiry or investigation to do 1 or more of the following:</p> <p>(a) to take an oath;</p> <p>(b) to answer a question relevant to the inspection, inquiry or investigation;</p> <p>(c) to produce a stated document or other thing relevant to the inspection, inquiry or investigation.</p> <p>(Investigative powers of Commissioner)</p>	<p>Require a person to take an oath, answer a question and produce documents.</p>	<p>Power – may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain power – do not delegate</p>
<p>23(1) The Commissioner shall cause to be kept a record of each member of the service, showing-</p> <p>(a) the date of birth of the member; and</p> <p>(b) for each officer—</p> <p>(i) the date when the officer was appointed to the service; and</p> <p>(ii) the classification of the officer; and</p> <p>(c) for each employee—the date the employee was engaged.</p> <p>(Records of members)</p>	<p>Records of each member of the service.</p>	<p>Power – may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain power – do not delegate.</p>
<p>36B The Commissioner may—</p> <p>(a) delegate to a public sector officer the commissioner’s functions under this Act or any other law; or</p> <p>(b) subdelegate to a public sector officer the functions delegated to the commissioner under a law other than this Act.</p> <p><i>Note</i> For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.</p> <p>(Delegation by Commissioner)</p>	<p>Delegate Commissioner powers to public sector officers as per 36D</p>	<p>Power – may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain power – do not delegate.</p>

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<p>36D (1) A delegator must not delegate a function under this division to a non-service delegate unless the delegator considers that the tasks to be undertaken by the non-service delegate require the exercise of that function.</p> <p>36D(2) A delegator who has delegated or subdelegated a function under this division may give directions to the delegate or subdelegate in relation to the exercise of the function.</p> <p>36D(3) Subsection (4) applies if the delegation or subdelegation of a function under this division is expressed to be given to people who occupy or exercise the functions of an office of a kind described in the delegation or subdelegation.</p> <p>36D(4) The delegation or subdelegation extends to any person who occupies, or exercises the functions of, an office of a kind described in the delegation or subdelegation, even if the office does not come into existence until after the delegation or subdelegation is given.</p> <p>(5) In this section: delegator means— (a) the Commissioner; or (b) the head of service; or (c) a director-general. -non-service delegate means a person exercising a function on behalf of the Territory otherwise than as— (a) an officer or employee; or (b) a statutory office-holder. (Delegations by head of service, commissioner and directors-general—generally)</p>	<p>Consider whether it is required to delegate powers to a non-service delegate. Give directions to delegates or sub delegates.</p>	<p>Function – may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain function – do not delegate.</p>

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<p>40(1) The Commissioner must— (a) after giving relevant unions and any other people the Commissioner considers appropriate an opportunity to put their views, cause to be developed an equal employment opportunity program for the service; and (b) cause to be prepared a written statement setting out the program so developed; and (c) give a copy of the statement to the Chief Minister and the head of the service. (Equal employment opportunity programs)</p>	<p>Prepare a written statement on an equal opportunity program for the service, after consultation.</p>	<p>Function – may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain function—do not delegate</p>
<p>41(1) The Commissioner must— (a) after giving relevant unions and any other people the Commissioner considers appropriate an opportunity to put their views, cause to be developed an access and equity program for the service; and (b) cause to be prepared a written statement setting out the program so developed; and (c) give a copy of the statement to the Chief Minister and the head of the service. (Access and equity programs)</p>	<p>Prepare a written statement on an access and equity program for the service, following consultation.</p>	<p>Function – may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain function – do not delegate</p>
<p>42(1) The Commissioner must— (a) in consultation with the joint council, relevant unions and with any other people the Commissioner considers appropriate, cause to be developed an industrial democracy program for the service; and (b) cause to be prepared a written statement setting out the program so developed; and (c) give a copy of the statement to the Chief Minister and the head of the service (Industrial democracy programs)</p>	<p>Prepare a written statement on an industrial democracy program for the service, following consultation.</p>	<p>Function – may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain function – do not delegate</p>

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70(6) The head of service must not, without consulting the Commissioner , appoint an officer, whose appointment has ended under this section, within 12 months after the day the appointment ends. (Appointment on probation)	Consult on the reappointment of an officer whose appointment has ended under this section.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate.
71(6) The head of the service must not, without consulting the Commissioner , appoint an officer, whose appointment has ended under this section within 12 months after the day the appointment ends. (Appointment on probation – prescribed training office)	Consult on the reappointment of an officer whose appointment has ended under this section.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
71A(6) The head of the service, must not, without consulting the Commissioner , appoint an officer as a teacher whose appointment has ended under this section, within 12 months after the day the appointment ends. (Appointment on probation – teachers)	Consult on the reappointment of an officer whose appointment has ended under this section.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
114 The head of service shall not, without consulting the Commissioner — (a) engage as an employee a person who has, whether before or after the commencement of this section, ceased to be an officer; or (b) enter into a contract with a person who has, whether before or after the commencement of this section, ceased to be an officer for the performance of services by that person; if the person has- (c) within the previous year and before the day fixed for the <i>Public Sector Management (Amendment) Act 1995</i> , section 2 (2) been retired as an officer under section 128 or section 137; or (d) within the previous year been retired from the service under section 143 as an excess officer without volunteering to accept retirement on that basis; or (e) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer; and	Consult on the engagement of certain former officers. Note K14.1 Enterprise Agreement 2010-2011 displaces 114(d) allowing a Chief Executive to engage an officer, at any time, who is involuntarily retired from the ACTPS.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate

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received a payment from the Territory or a territory instrumentality for being so retired. (Engagement of certain former officers as employees, and contracts with certain former officers, prohibited)				
117(2A) The head of service must not, without consulting the Commissioner , reappoint a person to the service if the person has— (a) within the previous year and before the day fixed for the <i>Public Sector Management (Amendment) Act 1995</i> , section 2 (2) been retired as an officer under section 128 or section 137; or (b) within the previous year been retired from the service under section 143 as an excess officer without volunteering to accept retirement on that basis; or (c) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer; and received a payment from the Territory or a territory instrumentality for being so retired. (Reappointment of retired officers)	Consult on the reappointment of certain retired officers	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
143(5) If a matter is referred under subsection (4) the Commissioner must take reasonable steps to identify a vacant position in the service that the officer is capable of performing and qualified to fill. (Redeploy or retire officer from the service)	Identify an office for the redeployment of an officer.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
143(6) If the commissioner identifies a position under subsection (5) the Commissioner must — (a) offer the position to the officer; and (b) if the officer consents to be redeployed—redeploy the officer to the position. (Redeploy or retire officer from the service)	Offer and redeploy an officer to an identified office.	Function/Power – may be delegated under s.36B	Not delegated	Retain function / power – do not delegate

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143(7) The Commissioner must refer the matter back to the head of service if— (a) the commissioner does not identify a position under subsection (5); or (b) an officer is offered a position under subsection (6) and does not consent to be redeployed. (Redeploy or retire officer from the service)	Refer a request for redeployment back to the relevant chief executive.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
248A(2) The Territory or a territory instrumentality must not, without consulting the Commissioner , employ a person to whom this section applies within the period immediately after his or her retirement from the service that corresponds to the length of his or her benefit period. (Engagement of certain former officers and employees prohibited)	Consult on the employment of certain former officers / employees within a specified period.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
248B(2) The Territory or a territory instrumentality must not, without consulting the Commissioner , employ the person within the 3-month period after the day the contract ends. (Engagement of certain former chief executives and executives prohibited)	Consult on the employment of a former director-general / executive within a specified period.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
251(1) The Commissioner may , with the Chief Minister’s written approval, make management standards for this Act. (Management Standards)	Make management standards.	Power - may be delegated under s.36B	Not delegated	Retain power – do not delegate
251(7) An approval of the kind referred to in subsection (6) may be given subject to conditions to be complied with by the Commissioner in making management standards to which the approval relates. (Management Standards)	Comply with conditions given by the Chief Minister.	N/A	N/A	N/A

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Public Sector Management Standards 2006				
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23 The Commissioner may declare that any day will be observed as a holiday in respect of any class of officers or employees in the ACTPS. (Public holiday in the ACTPS)	Declare any day to be observed as a public holiday by officers or employees in the ACTPS.	Power - may be delegated under s.36B	Not delegated	Retain power – do not delegate
24(1) Under the Act, section 40, the Commissioner is to develop and issue an equal employment opportunity program for the Service. (2) The Equity and Diversity Framework for the ACT Public Service is intended as that program. (3) The Commissioner will update the Framework as appropriate by providing a statement to that effect to the Chief Minister. (Commissioner for Public Administration responsibilities)	Develop and issue an equal employment opportunity program for the service.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate
243. In this division: Independent Reviewer means a person approved by the Commissioner to review and make recommendations on employment related decisions under industrial instruments. (Interpretation—div 3.10.4)	Approve individuals to act as Independent Reviewers with the capacity to review and recommend employment related decisions.	Power - may be delegated under s.36B	Not delegated	Retain power – do not delegate
581(1) The Chair of the Joint Council is the Commissioner . (Chair and Deputy Chair)	Chair the Joint Council.	Function – may be delegated under s.36B	Not delegated	Retain function – do not delegate.
582(1) The Commissioner and UnionsACT may nominate members for appointment to Joint Council. (Members)	Nominate members for appointment of the Joint Council.	Power - may be delegated under s.36B	Not delegated	Retain power – do not delegate

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Public Sector Management Standards 2006				
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<p>584(1) The Commissioner on advice of the Joint Council may terminate the appointment of a member for misbehaviour or physical or mental incapacity.</p> <p>584(2) The Commissioner, on advice of the Joint Council and in consultation with the Deputy Chair, may terminate the appointment of members to reduce the total membership of the Joint Council.</p> <p>584(3) If a member nominated by the Commissioner ceases to be employed by the ACT Public Service the appointment shall lapse.</p> <p>584(4) If a member nominated by the Commissioner remains employed by the ACT Public Service but is no longer employed in the position that he or she held at the time of appointment the appointment shall lapse unless the Commissioner, in consultation with the Deputy Chair, allows a membership to continue.</p> <p>584(5) If a member nominated by UnionsACT ceases to be a member of UnionsACT the appointment shall lapse.</p> <p>584(6) If a member nominated by UnionsACT remains a member of UnionsACT but is no longer affiliated in a capacity that would be representative of the relevant union the appointment shall lapse unless the Commissioner, in consultation with the Deputy Chair, allows a membership to continue.</p> <p>(Termination of appointment)</p>	<p>Terminate appointment of members of the Joint Council.</p> <p>Allow the membership of a member nominated by the Commissioner to continue where they no longer hold the position held at the time of appointment.</p> <p>Allow the membership of a member nominated by UnionsACT to continue where they are no longer affiliated in the same capacity with UnionsACT.</p>	<p>Power - may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain power – do not delegate</p>
<p>641(4) The head of service—</p> <p>(a) must consult with the Commissioner before giving written consent under this section; and</p> <p>(b) may impose conditions to the consent.</p> <p>(Appointment or engagement of former statutory office holders)</p>	<p>Consult on the engagement of certain former statutory office holders.</p>	<p>Function - may be delegated under s.36B</p>	<p>Not delegated</p>	<p>Retain function – do not delegate</p>

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Enterprise Agreement 2010-2011				
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F10.2 (o) any other day, or part of any day, declared to be a holiday by the Commissioner for Public Administration. (Public Holidays)	Declare any day to be observed as a public holiday.	Powers under the EA cannot be delegated.	Not delegated	N/A
I4.3 (b) Subject to subclauses I4.1 and I4.2, the Chief Executive must arrange for an application made under clause I3 to be investigated by an independent person (the nominee) who may be: (b) a person agreed by the Agency Consultative Committee nominated from a panel of providers approved by the Commissioner for Public Administration; or (Chief Executive Powers and Responsibilities)	Approve panel of providers for Internal Reviews	Powers under the EA cannot be delegated.	Not delegated	N/A
I4.15 The Commissioner for Public Administration may, after considering the report from a nominee, recommend to the Chief Executive that: (a) the original action be confirmed; or (b) the original action be varied; or (c) other action be taken. (Procedures where the Subject of the Application is an Action of the Chief Executive)	Recommend an action, when the subject of the application is an action of the Chief Executive	Powers under the EA cannot be delegated.	Not delegated	N/A
I4.18 If the Chief Executive does not accept any one of the recommendation(s) of the Commissioner for Public Administration under subclause I4.15, the Commissioner may report on this outcome in the Commissioner’s State of the Service Report. (Procedures where the Subject of the Application is an Action of the Chief Executive)	Report on recommendations not accepted by Chief Executives in the Commissioner’s State of the Service Report.	Powers under the EA cannot be delegated.	Not delegated	N/A

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Enterprise Agreement 2010-2011

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J3.3 The Appeal Panel will comprise a nominee of the Agency, a nominee of the employee and a chairperson, where: (a) the chairperson is chosen from a panel of providers approved by the Commissioner for Public Administration (in consultation with the Agency Consultative Committee), or, in the case of an appeal relating to a promotion decision, an agreed person; (Composition of Appeal Panel)	Approve panel of providers for the purposes of Appeal Panels.	Powers under the EA cannot be delegated.	Not delegated	N/A
J6.3 In making recommendations to the Chief Executive under subclause J6.1 or to the Commissioner for Public Administration under subclause J6.2, the Appeal Panel: (a) must provide the reasons for its recommendations; and (b) may request the Chief Executive or the Commissioner for Public Administration, whichever is applicable, to inform other relevant parties of its recommendations. (Powers of the Appeal Panel – Other Matters)	Inform relevant parties of the recommendations of an Appeal Panel, where requested.	Powers under the EA cannot be delegated.	Not delegated	N/A
J6.5 The Commissioner for Public Administration, after considering the report from an Appeal Panel under subclause J6.2, will recommend to the Chief Executive that the decision that is the subject of the application: (a) be confirmed; or (b) be varied; or (c) other action taken. (Powers of the Appeal Panel – Other Matters)	Recommend an action to Chief Executive after considering a report from an Appeal Panel.	Powers under the EA cannot be delegated.	Not delegated	N/A

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Enterprise Agreement 2010-2011

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J6.7 If the Chief Executive does not accept the recommendations of the Commissioner for Public Administration under subclause J6.5, the Commissioner may report on this outcome in the Commissioner’s State of the Service Report. (Powers of the Appeal Panel – Other Matters)	Report on recommendations not accepted by Chief Executives in the Commissioner’s State of the Service Report.	Powers under the EA cannot be delegated.	Not delegated	N/A
K14.2 Officers who elect to be made voluntarily redundant under clause K5 cannot be re-engaged in the ACTPS within two years of the date of the officers’ separation from the ACTPS, except with the written consent of the Commissioner for Public Administration. (Re-engagement of Previously Retrenched Officers)	Give written consent for re-engagement with the ACTPS within two years of the officer accepting a voluntary redundancy.	Powers under the EA cannot be delegated.	Not delegated	N/A
Annex B – Agreed Framework for Special Employment Arrangements 6.2 Should the Chief Executive consider that there is a compelling reason for the Agency to pay enhanced rates of pay in excess of the 50% cap of the existing pay of the position, the Chief Executive will apply to the Commissioner for Public Administration for approval to do so. (Agreed Framework for Special Employment Arrangements)	Approved enhanced pay rates in excess of the 50% of the salary of the position.	Powers under the EA cannot be delegated.	Not delegated	N/A
Annex D – Leave to: Campaign for an Election An employee who is standing for election to the ACT Legislative Assembly, Commonwealth or State House of Parliament, or other legislative or advisory body approved by the Commissioner . (Other Leave)	Give approval that the advisory body an employee is standing for or campaigning for in an election is a suitable body for the purposes of an employee to take leave to campaign for an election.	Powers under the EA cannot be delegated.	Not delegated	N/A

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Other references to Commissioner that do not relate to powers.

Public Sector Management Act 1994	Public Sector Management Standards
22(4) – <i>Investigative powers of the Commissioner</i> – inspection, inquiry or investigation is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).	16(8) – <i>Monitoring and recording integrity strategies</i> - details of the appointment must be forwarded to the Commissioner.
23(3) – <i>Records of members</i> – reference to Commissioner is a reference to the chief executive officer of an instrumentality.	Definition – <i>the Commissioner</i> – means the Commissioner for Public Administration.
43 – <i>Development of programs in autonomous instrumentalities</i> – reference to Commissioner shall be taken to be reference to chief executive officer of the instrumentality.	Enterprise Agreement 2010-2011
44(2) – <i>Joint Council</i> – council shall representative of the Commissioner, government and relevant staff organisations.	D1.1 Voluntary access to salary sacrifice arrangements will be made available to employees in accordance with policies and guidelines issued by the Commissioner for Public Administration from time to time.
241(2) – <i>Returns and information generally</i> - a person must give any returns or other information to the commissioner required for the purposes of the exercise of the commissioner's functions under this Act.	K14.1 Despite the <i>PSM Act</i> , officers who are involuntarily retired from the ACTPS can be engaged at any time by the Chief Executive without the written consent of the Commissioner for Public Administration.
28D(4) – <i>Directors-general—notice or payment if not re-engaged</i> – Note Section 248B provides that the Territory or a territory instrumentality must not, within 3 months after the day the contract ends, and without consulting the Commissioner, employ a person who has received, or is entitled to, an amount mentioned in this subsection.	K14.2 Officers who elect to be made voluntarily redundant under clause K5 cannot be re-engaged in the ACTPS within two years of the date of the officers' separation from the ACTPS, except with the written consent of the Commissioner for Public Administration. Dictionary - Commissioner for Public Administration means the person appointed under section 18(1) of the <i>PSM Act</i> .