

PUBLIC SERVICE.

12° Elizabeth II., No. LIX.

No. 59 of 1963.

**AN ACT to amend the Public Service Act,
1904-1956.**

[Assented to 11th December, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Public Service Act Amendment Act, 1963*.

Vol. 6.
Reprinted
Acts
approved for
reprint 28th
October,
1953, as
amended by
Acts Nos.
54 of 1954,
53 of 1955 and
69 of 1956.

(2) In this Act the Public Service Act, 1904-1956 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Public Service Act, 1904-1963.

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. Section four of the principal Act is amended by adding after the word, "the" where secondly occurring, the word, "First". S. 4
amended.

4. Section five of the principal Act is amended— S. 5
amended.

(a) by substituting for the interpretation, "Department", the following interpretation—

"Department" means a branch of the Public Service established as a Department in accordance with the regulations. ;

(b) by adding after the interpretation, "Department", the following interpretation—

"Justiciable salary" has the same meaning as that expression has in section one hundred and forty-three of the Industrial Arbitration Act, 1912. ;

(c) by substituting for the interpretation, "Magistrate" the following interpretation—

"Magistrate" means a Stipendiary Magistrate appointed or deemed to be appointed under the Stipendiary Magistrates Act, 1957. ;

(d) by adding after the interpretation, "Minister", the following interpretation—

"Office" means a position that has been created as a permanent position in a Department. ;

(e) by substituting for the interpretation, "Officer", the following interpretation—

"Officer" means a person, other than a temporary employee, who is employed under the provisions of this Act in a permanent capacity in the Public Service. ;

- (f) by substituting for the interpretation, "Permanent Head", the following interpretation—

"Permanent Head" in relation to a Department, office in a Department, officer or temporary employee employed in a Department, means the officer immediately responsible for the management of the Department to a Minister of the Crown. ;

See s. 4,
Act No. 30
of 1918.

- (g) by repealing the following interpretations—

- (i) "Prescribed";
- (ii) "Regulations"; and
- (iii) "This Act"; and

- (h) by adding after the interpretation, "Permanent Head", the following interpretations—

"State Services" means the instrumentalities of the Crown in right of the State, whether departments, corporations, agencies or other authorities. ;

"Sub-department" means a branch of the Public Service established as a sub-department in accordance with the regulations. ;

"Temporary employee" means a person temporarily employed under section thirty-one of this Act. ; and

"the Public Service" means that part of the State Services which, subject to section six of this Act, includes departments and sub-departments, all persons employed for the time being under the provisions of this Act in any capacity in any such department or sub-department and all offices therein. .

5. Section twenty-one of the principal Act is repealed and re-enacted as follows—

S. 21
repealed and
re-enacted.

21. A person is not eligible for appointment to an office on the permanent staff of the Public Service and his appointment on probation shall not be confirmed as an effective appointment on the permanent staff, unless—

Qualification
for appoint-
ment to
Public
Service.

- (a) he is a natural born or naturalised British subject or, if not such, is competent to become, and undertakes to become, and does become, a naturalised British subject within six months of the appointment;
- (b) he has passed the prescribed entrance examination or been exempted from doing so on the ground that he then possesses higher or equivalent qualifications;
- (c) he has passed the prescribed medical examination as to general health and physical fitness;
- (d) he is within prescribed age limits and has produced satisfactory evidence of the date of his birth;
- (e) he has complied with the requirements of the regulations relating to superannuation or life assurance or been exempted from so doing; and
- (f) he has given satisfactory service during probation. .

6. Subsections (2) and (3) of section twenty-three of the principal Act are repealed and the following subsections substituted—

S. 23
amended.

(2) Where the maximum salary of an office exceeds the justiciable salary an appointment to that office shall be made by the Governor only, and on the recommendation of the Commissioner.

(3) Where the maximum salary of an office does not exceed the justiciable salary, an appointment to that office may be made by the Commissioner.

(4) Where an appointment on probation is made by the Governor, the Governor, on expiry of the period of probation, may, on the recommendation of the Commissioner, confirm or annul that appointment, or extend the period of probation for a further period not exceeding six months, but so that in any event the total period of probation shall not exceed twelve months.

(5) Where an appointment is made by the Commissioner, the Commissioner, on the expiry of the period of probation, may, on the recommendation of the Permanent Head, confirm or annul the appointment or extend the period of probation for a further period not exceeding six months, but so that in any event the total period of probation shall not exceed twelve months.

(6) Where a person is appointed on probation and the appointment is annulled under subsection (4) or (5) of this section, that person is not eligible to be appointed on probation under this Act at any time within twelve months from the date the appointment is so annulled.

(7) Any appointment made under this section, either by the Governor or the Commissioner, takes effect from such date as is specified by the Governor or the Commissioner when making the appointment and that date may be a date that precedes the date on which the appointment is in fact made. .

7. Section twenty-four of the principal Act is amended by substituting for the passage commencing with the word, "compliance" in line ten and

ending with the word, "sixty-eight" being the last word in the section, the words, "that person to make financial provision for retirement from the Public Service in accordance with this Act".

8. Subsection (2) of section twenty-eight of the principal Act is amended by adding after the word, "Governor" in line one, the passage, "or the Commissioner, as the case requires,".

S. 28
amended.

9. Subsection (1) of section thirty of the principal Act is repealed and re-enacted as follows—

S. 30
amended.

(1) Where any person has, whether before or after the coming into operation of the Public Service Act Amendment Act, 1963, retired from a salaried office in the Public Service, that is not of a temporary or casual nature, if—

- (a) the person is not over sixty years of age; and
- (b) his retirement was not due to misconduct or incompetence,

he is eligible for appointment to the Public Service without examination or probation, and, if the Governor thinks fit, without making financial provision for retirement from the Public Service in accordance with this Act. .

10. Section thirty-one of the principal Act is repealed and re-enacted as follows—

repealed and
re-enacted.
S. 31

31. (1) Where after receiving and considering a report from the Permanent Head, the Commissioner is of opinion that the prompt despatch of the business of a Department renders temporary assistance necessary, and the Commissioner is unable to provide that assistance from other Departments, the Commissioner may select such person or persons as are available and as appear to be best qualified for rendering that assistance.

Temporary
employment.

(2) As far as practicable a person shall not be so selected by the Commissioner, unless he has passed the examinations prescribed for admission to the Division of the Public Service in which the duties to be performed in rendering the assistance are classified, or unless he is exempted from passing those examinations on the ground that he possesses higher or equivalent qualifications.

(3) A person may be employed under this section for any period not exceeding six months in the first instance and, if necessary, may, with the approval of the Commissioner, be employed at the end of that period for any further period or periods not exceeding six months each if the Commissioner, after investigation, certifies that it is in the interest of the Public Service that the person should be so employed for the further period.

(4) (a) The services of a person temporarily employed under this section may be terminated at any time by the Commissioner or by the Permanent Head subject to confirmation by the Commissioner.

(b) Seven days' notice of intention to terminate the services of a person under this subsection shall be given by the Commissioner or the Permanent Head, as the case requires, to that person.

(5) Except in the Parts and sections of this Act that are set forth in the Second Schedule to this Act, any reference in this Act to an officer or officers shall be read and construed as including a reference to a temporary employee or, as the case requires, to temporary employees.

(6) Where a temporary employee contravenes any provision of this Act, or is guilty of—

(a) any wilful disobedience or disregard of a lawful order made or given by a person legally entitled to make or give the order;

"This Act"
includes
regulations.
See s. 4,
Act No. 30
of 1918.

- (b) neglect or want of care in the discharge of his duties as a temporary employee;
- (c) inefficiency or incompetency in the discharge of such duties which inefficiency or incompetency arises from causes within his control;
- (d) taking intoxicating liquor or drugs to excess;
- (e) any disgraceful conduct; or
- (f) any improper conduct,

the temporary employee is guilty of an offence and if his guilt is proved to the satisfaction of the Commissioner, he is liable to be forthwith dismissed from his employment under this section or is liable to such other penalty or punishment as may be prescribed. .

11. Section thirty-two of the principal Act is repealed and re-enacted as follows—

S. 32
repealed and
re-enacted.

32. (1) Subject to this section the Governor, on the recommendation of the Commissioner made after the Commissioner has obtained a report from the Permanent Head, may—

Power to
create and
abolish
offices and
to transfer
or promote
officers from
one office
to another
office or
from one
Division of
the Public
Service to
another.

- (a) create a new office or abolish an existing office in the Public Service; and
- (b) transfer or promote, subject to this Act, any officer from one office to another office, or from one Division to another Division of the Public Service, after the officer has passed such examinations, if any, as are prescribed,

where the maximum salary for the office referred to in paragraph (a) of this subsection, or for the office to be occupied by the officer referred to in paragraph (b) of this subsection who it is proposed to transfer or promote, exceeds the justiciable salary, but if that

maximum salary is not so in excess, the power conferred on the Governor by this section is exercisable by the Commissioner.

(2) Any power exercisable by the Governor or the Commissioner under this section may be exercised so as to take effect from any date specified by the Governor or the Commissioner when exercising the power, including a date that is prior to the date on which the power is in fact exercised. .

S. 34
amended.

12. Section thirty-four of the principal Act is amended—

- (a) by adding after the section number, “34” the subsection designation, “(1)”;
- (b) by substituting for the passage, “may, on the recommendation of the Commissioner,” in lines three and four, the passage, “or the Commissioner, as the case requires, may,”;
- (c) by adding between the passage, “occurs,” in the fifth last line and the passage, ““Efficiency”” in the fourth last line, the following subsections—

(2) When the recommendation of the Commissioner for the appointment of an officer to fill the vacancy is not approved by the Governor, the Commissioner shall, after receiving a report from the Permanent Head, recommend within a time specified by the Minister, another officer to fill the vacancy, and if such recommendation is approved by the Governor the officer so recommended shall be appointed accordingly.

(3) When the Governor does not approve of such a recommendation of the Commissioner, a statement of the reasons for not approving the recommendation and for requiring a further recommendation shall, within seven days after the

date the Governor fails to so approve, be laid before Parliament, and if Parliament is not then sitting, then within the first seven days of the next following sitting of Parliament. ; and

- (d) by adding before the passage, "Efficiency" in the fourth last line, the subsection designation, "(4)".

13. Section thirty-eight of the principal Act is repealed. S. 38
repealed.

14. Section thirty-nine of the principal Act is amended by adding after the word, "Governor" in line one, the passage, "or the Commissioner, as the case requires,". S. 39
amended.

15. Section forty-one of the principal Act is repealed. S. 41
repealed.

16. Section forty-seven of the principal Act is repealed. S. 47
repealed.

17. Section fifty-two of the principal Act is repealed and re-enacted as follows— S. 52
repealed and
re-enacted.

52. (1) On and from the first day of January, nineteen hundred and sixty-three, each officer is entitled to annual leave of absence for recreation for three weeks on full pay. Annual
leave for
recreation.

(2) The time during which an officer of a Department may take annual leave shall, in every case, be such as is approved by the Permanent Head of the Department.

(3) With the written consent of the Permanent Head the annual leave for recreation of an officer may, when the convenience of the Department is served thereby, be allowed to accumulate for not exceeding three years' entitlement.

(4) (a) Notwithstanding the provisions of subsection (1) of this section, on and after the first day of January, nineteen hundred and sixty-three, the Commissioner may grant to any officer or category of officers, annual leave of absence for recreation in excess of three weeks in any one year on full pay, if he is of opinion that special circumstances exist by reason of the nature of the duties performed by, or the remoteness of the headquarters from large centres of settlement of, any such officer or category of officers.

(b) Leave of absence granted under paragraph (a) of this subsection is subject to such terms and conditions as the Commissioner may, in any particular case, determine. .

S. 53
amended.

18. Section fifty-three of the principal Act is amended by adding after the word, "sanctioned" in lines one and two, the words, "under the provisions of this Act".

S. 54
repealed and
re-enacted.

19. Section fifty-four of the principal Act is repealed and re-enacted as follows—

Leave of
absence on
account of
illness or
necessity.

54. (1) In case of illness, the Permanent Head may grant an officer leave of absence for a period not exceeding two months, and in cases of illness or other pressing necessity, the Commissioner may grant an officer leave of absence for not exceeding twelve months and any leave of absence granted under this subsection shall be granted on such terms and conditions as are prescribed.

(2) Where an officer has received continuous leave of absence for a period of twelve months on account of illness, if after that period the officer has not sufficiently recovered from the illness to resume the duties of his office, the Governor, on the recommendation of the Commissioner, may grant to that officer a further period of leave of absence on such terms and conditions as are prescribed.

20. Section fifty-five of the principal Act is repealed and re-enacted as follows—

S. 55
repealed and
re-enacted.

55. (1) Where the Commissioner is satisfied that there is sufficient cause for doing so, he may grant an officer leave of absence without pay for a period not exceeding three months in any one continuous absence, and the Governor, on the recommendation of the Commissioner, may grant an officer leave of absence without pay for any continuous period exceeding three months.

Leave
of absence
without pay.

(2) Subject to subsection (3) of this section, any period that exceeds two weeks during which an officer is on leave of absence granted under this section shall not, for any purpose, be regarded as part of the period of service of that officer.

(3) Where an officer is granted leave of absence without pay under this section, for the purpose of undertaking studies that relate directly to his official duties as an officer, the Governor, on the recommendation of the Commissioner, may determine that such leave of absence shall be regarded as part of the period of service of that officer for all purposes except qualifying service for annual leave of absence for recreation. .

21. Section fifty-six of the principal Act is repealed and re-enacted as follows—

S. 56
repealed and
re-enacted.

56. (1) Subject to this section, any officer who in the Public Service has completed a period of—

Long service
leave.

(a) seven years of continuous service in a permanent capacity;

(b) ten years of continuous service in a temporary capacity; or

Cl. s. 31 (5).

- (c) eight and a half years of continuous service, of which period not less than eighteen months has been served in a temporary capacity and the remainder of the period has been served in a permanent capacity,

is entitled to three months of long service leave on full pay.

(2) Where an officer was, immediately prior to being employed in the Public Service, in full time employment in any State Service and that employment was continuous with his service under this Act, the officer is entitled to three months of long service leave on full pay on either—

- (a) the date on which he would have become entitled to long service leave had he remained employed in the State Service; or
- (b) the date determined in accordance with this section,

whichever date is the earlier.

(3) Subject to this section, any officer is entitled to an additional three months of long service leave on full pay for each subsequent period of seven years of continuous service completed by him.

(4) Every officer shall take the long service leave to which he is entitled under this section between such dates as the Commissioner, after obtaining a report from the Permanent Head, may direct or approve, and—

- (a) an officer, with the approval of the Commissioner and subject to paragraph (b) of this subsection, may accumulate his entitlement to long service leave up to a maximum of nine months;
- (b) in the case of an officer who at the date of the coming into operation of the Public Service Act Amendment Act,

1947, had accumulated or within five years of that date had accumulated at least six months of long service leave, the Commissioner may approve the accumulation of his entitlement to long service leave, including the long service leave already accumulated, up to a maximum of twelve months; and

- (c) if an officer reduces his maximum long service leave entitlement approved under this subsection, by taking not less than three months of long service leave, the officer may again qualify for long service leave up to that maximum long service leave entitlement.

(5) Upon the application of an officer in respect of his long service leave entitlement, the Commissioner may approve the taking by the officer—

- (a) of double the period of long service leave entitlement of the officer on half pay instead of the period of his long service leave entitlement on full pay; or
- (b) of any portion of long service leave entitlement of the officer on full pay or double the portion on half pay.

(6) The Governor may make regulations furthering or facilitating the objects or operation of this section and in particular may make regulations—

Regulations
relating to
long service
leave
entitlement.

- (a) providing for lump sum payments instead of long service leave entitlements;
- (b) providing for lump sum payments for *pro rata* long service leave entitlements—
 - (i) to officers who retire after attaining the age of sixty years or through ill-health;

- (ii) to female officers who resign from the Public Service because of, or with a view to marriage;
- (iii) to other officers;
- (iv) in the case of death of an officer, to his estate, unless he is survived by a widow legally dependent on him, or other person legally so dependent who is approved by the Treasurer for the purpose; and
- (v) in relation to each class of officer to prescribe the minimum qualifying continuous service,

but so that the calculation of the amounts of leave or money due under the regulations to any officer shall be based upon the rate of salary of the officer at the date of his retirement, resignation or death, as the case may be; and so that no payment that exceeds the equivalent of twelve months' salary shall be paid under the regulations.

(7) In this section the expression "continuous service" in relation to an officer includes any period during which the officer is absent on full pay or part pay from his duties in the Public Service, but does not include—

- (a) any period exceeding two weeks during which the officer is absent on leave without pay; unless the Governor has made a determination under subsection (3) of section fifty-five of this Act;
- (b) any period during which the officer is taking his long service leave entitlement or any portion thereof;
- (c) any service of the officer prior to his attaining the age of eighteen years;
- (d) any service of an officer who resigns, except a female officer who resigns because of or with a view to marriage,

or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which he is dismissed from the Public Service, when that prior service has actually entitled the person to long service leave under this section;

- (e) any period of service between the date on which an officer's approved accumulated entitlement to long service leave became due and the date he reduces that entitlement by taking not less than three months long service leave.

22. Section fifty-eight of the principal Act is S. 58 repealed.

23. Section sixty-two of the principal Act is S. 62 repealed.

24. Section sixty-three of the principal Act is S. 63 repealed.

25. Section sixty-four of the principal Act is S. 64 repealed.

26. Section sixty-five of the principal Act is S. 65 repealed.

27. Section sixty-six of the principal Act is S. 66 repealed.

28. Section sixty-seven of the principal Act is S. 67 repealed.

29. Section sixty-eight of the principal Act is S. 68 repealed.

S. 77
repealed and
re-enacted.

30. Section seventy-seven of the principal Act is repealed and re-enacted as follows—

Regulations.

77. (1) The Governor, on the recommendation of the Commissioner, may make such regulations as he deems necessary for carrying the purposes and provisions of this Act into effect, for prescribing all matters required or permitted by this Act to be prescribed and, in particular,—

Operation,
order and
discipline
of Public
Service.

(a) for prescribing procedures for the economical and efficient operation, and for the good order and discipline of the Public Service;

Preservation
and economy
of Govern-
ment
property.

(b) for providing for the preservation and economy in the use of Her Majesty's property;

Conduct
of officers.

(c) for prescribing the conduct of officers with respect to—

(i) members of the public;

(ii) one another; and

(iii) relations with and between Departments;

(d) the establishment, alteration, or abolition of any Department or sub-department;

Hours of
attendance
of officers.

(e) for regulating the hours of attendance of officers and the keeping and method of recording attendances of officers;

(f) (i) for requiring a person as a condition of his appointment to the permanent staff of the Public Service to make such financial provision for his retirement therefrom as the regulations prescribe, either by way of assurance of his life with any of the life assurers approved by the Governor on the recommendation of the Commissioner, or by way of contribution to any scheme for superannuation or to any provident or other fund so prescribed;

- (ii) for prescribing such schemes of superannuation, provident or other funds and the amount of such financial provision or such contributions;
- (iii) for authorising deductions to be made from the salary of any such person and appropriated to that life assurance or those contributions; and
- (iv) for exempting any person or class of persons from complying wholly or in any part with any regulation made under subparagraph (i) of this paragraph;
- (g) for prescribing conditions precedent to the appointment of officers to, or within the Public Service and the procedure to be followed by officers on their resignation from, or termination of service in, the Public Service;
- (h) for prohibiting the disclosure or communication by officers, to any person, of government business or information on government affairs, and public comment by officers;
- (i) for providing the means of communication between officers and Departments and between officers and the Commissioner and for the recognition of any representative body of officers;
- (j) for requiring officers to occupy any prescribed quarters provided for their use and providing conditions of such occupancy;
- (k) for prescribing the conditions under which any officer or temporary employee may take, or receive the benefit of, any patent rights, in

respect of anything invented or perfected by that officer or temporary employee in the course of his employment in the Public Service;

- (l) for prescribing the terms upon which the services of a female officer may be terminated upon her marriage;
- (m) for prescribing fees for witnesses required to give evidence in any inspection, inquiry or investigation under this Act and the fees for examination of candidates for entrance to the Public Service;
- (n) for providing for the training of officers and—
 - (i) for creating in any Department cadetships for the training of young persons in work requiring in its performance special skill or technical knowledge usually required only in a profession or occupation distinct from the ordinary routine of the Public Service;
 - (ii) for prescribing all things which, in the opinion of the Governor, are necessary or desirable in relation to cadetships;
- (o) for notifying all vacancies in offices in the Public Service and the method of applying to be appointed to such vacancies; and
- (p) for prescribing a penalty of a fine not exceeding fifty pounds for offences against the regulations.

(2) The regulations may be of general application or apply in particular cases and may prescribe the cases in which, and the

conditions, if any, under which any person or class of persons shall be exempted either wholly or to such extent as is specified in the regulations from the provisions of the regulations. .

31. The Schedule to the principal Act is amended by adding before the word, "Schedule" in the first line, the word, "First". First
Schedule
amended.

32. The principal Act is amended by adding after the Schedule a schedule as follows— Second
Schedule
added.

SECOND SCHEDULE.

Part III and V of this Act.

Sections ten, thirteen, forty-six, forty-nine and sixty-nine of this Act. .
