

PUBLIC SERVICE.

No. 86 of 1978.

AN ACT to regulate the Public Service.

[Assented to 8th November, 1978.]

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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Public Service Act, 1978*, and is divided into Parts and Divisions as follows—

Short title
and
arrange-
ment.

PART I.—PRELIMINARY.

PART II.—THE PUBLIC SERVICE BOARD.

*Division 1—Constitution, Membership,
Meetings, etc.*

Division 2—Functions and Powers.

PART III.—THE PUBLIC SERVICE.

*Division 1—General.**Division 2—Promotions.*

PART IV.—DISCIPLINE.

PART V.—MISCELLANEOUS.

PART VI.—TRANSITIONAL.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Construc-
tion in
relation to
Public
Service
Arbitration
Act, 1966.

3. (1) This Act shall be read with and subject to the provisions of the Public Service Arbitration Act, 1966, and shall be so construed and administered that, where in any case any provision of this Act is inconsistent with or repugnant to any provision of the Public Service Arbitration Act, 1966, the last-mentioned provisions shall prevail, and the provisions of this Act to the extent by which the effect thereof would but for this section limit, hinder, or obstruct the operation of any provision of the Public Service Arbitration Act, 1966, according to the tenor thereof contrary to the object and intention of that Act shall have no effect.

(2) Save and except as provided in subsection (1), the provisions of this Act and the administration of such provisions according to the tenor thereof, shall continue as if the Public Service Arbitration Act, 1966, had not been enacted.

Repeal.

4. The Public Service Act, 1904, as amended is hereby repealed.

Interpre-
tation.

5. (1) In this Act, in Public Service Notices, and in Administrative Instructions unless the contrary intention appears—

“Administrative Instructions” means Adminis-
trative Instructions given under section 19;

“Board” means the Public Service Board
established by Part II of this Act;

“Chairman” means the Commissioner appointed to be Chairman of the Board under section 6;

“Commissioner” means any Commissioner of the Board appointed under section 6;

“Department” means a branch of the Public Service established as a Department under section 21;

“Deputy Chairman” means any Commissioner of the Board appointed to be Deputy Chairman of the Board under section 6;

“Minister” means the Minister of the Crown for the time being administering the Department in which the officer in connection with whom the term is used is employed;

“office” means an office in the Public Service;

“officer” means a permanent officer, a temporary officer, or any other officer employed in a Department under and subject to this Act;

“Permanent Head” in relation to a Department, office in a Department, or an officer employed in a Department, means the person immediately responsible for the general management of the Department to the Minister of the Crown for the time being administering the Department;

“permanent officer”—

(a) means a person holding a current appointment to perform duties as an officer in the Public Service in a permanent capacity under and subject to this Act; and

(b) includes—

(i) a Permanent Head; and

(ii) a Senior Officer,

holding a current appointment for a term of years under section 29;

“Promotions Appeal Board” means the Promotions Appeal Board established under section 36;

“Public Service Notices” means notices in writing issued by or under the authority of the Board;

“Salaries and Allowances Tribunal” means the Salaries and Allowances Tribunal established under the Salaries and Allowances Tribunal Act, 1975.

“section” means a section of this Act;

“Senior Office” means an office in respect of which there is in force a declaration made under section 28;

“Senior Officer” means the holder of a Senior Office;

“Sub-Department” means a branch of the Public Service established as a Sub-Department under section 22;

“subsection” means a subsection of the section wherein the term is used;

“temporary officer” means a person holding a current appointment to perform duties as an officer in the Public Service in a temporary capacity under and subject to this Act.

(2) It is hereby expressly declared that the term “this Act”—

(a) except in section 60, includes regulations made under this Act;

(b) except in sections 19 and 60, includes Administrative Instructions made under this Act.

(3) Nothing in subsection (2) affects the operation of the Interpretation Act, 1918.

PART II.—THE PUBLIC SERVICE BOARD.

Division 1.—Constitution, Membership, Meetings, etc.

6. (1) For the purposes of this Act, there shall be a Board to be known as the Public Service Board which, subject to this Act, shall have the functions and powers and perform the duties and obligations conferred and imposed upon it by this Act. ^{The Board.}

(2) The Board shall consist of three Commissioners, namely a Chairman of the Board, a Deputy Chairman of the Board and one other Commissioner, all of whom shall be appointed by the Governor.

(3) Subject to subsection (6)—

(a) the Chairman shall be appointed for a term of seven years; and

(b) the Deputy Chairman and the other Commissioner shall each be appointed for a term of five years,

and the Chairman, Deputy Chairman and other Commissioner shall all be eligible for re-appointment.

(4) Subject to subsection (6), where a person appointed Chairman of the Board was, immediately prior to his appointment as such, Deputy Chairman or other Commissioner, he shall be appointed Chairman for a term of seven years and his office as Deputy Chairman or other Commissioner shall become vacant at the time of his appointment as Chairman.

(5) Subject to subsection (6), where a person appointed Deputy Chairman of the Board was, immediately prior to his appointment as such, holding office as the other Commissioner of the Board, his appointment as Deputy Chairman shall be for a term of five years and his office as other Commissioner shall become vacant at the time of his appointment as Deputy Chairman.

(6) If—

- (a) a person appointed to be Chairman is, at the time of his appointment or re-appointment, over the age of fifty-eight years; or
- (b) a person appointed to be Deputy Chairman or other Commissioner is, at the time of his appointment or re-appointment, over the age of sixty years,

the term of his appointment, or as the case may be, re-appointment, shall be for the period that will expire on his attaining the age of sixty-five years.

(7) Notwithstanding that a Commissioner of the Board has attained the age of sixty-five years, if the Board certifies that in the interests of the Public Service it is desirable that he should continue to hold his appointment the Governor may extend the period of such appointment for such time as he thinks fit.

(8) Where any Commissioner, immediately prior to his appointment occupied an office in the Public Service under this Act he shall, if he resigns his office as Commissioner or if his term of office as Commissioner expires by effluxion of time, other than by his attaining the age of sixty-five years or by the expiry of a period extended under subsection (7), and he is not re-appointed, be entitled to be appointed to an office in the Public Service under this Act not lower in status than the office which he so occupied immediately prior to his appointment as a Commissioner, and, if he then accepts an appointment to an office in the Public Service, subsection (4) of section 6 of the Superannuation and Family Benefits Act, 1938 does not apply to or in relation to him.

Acting
Commissioners.

7. (1) The Governor may appoint a person to be an Acting Commissioner during the illness, absence, or suspension of a Commissioner, and a person so appointed has, while his appointment as Acting Commissioner subsists, all the powers, functions, duties, obligations and immunities of a Commissioner.

(2) The provisions of subsection (8) of section 6 and subsections (3) and (4) of section 8 apply with such modifications as are necessary to and in relation to a person appointed as an Acting Commissioner.

8. (1) The Commissioners shall receive salaries at such rates per annum as are respectively from time to time determined by the Salaries and Allowances Tribunal. **Rights.**

(2) Any Acting Commissioner shall, in respect of any service in that capacity, receive such remuneration, by way of salary or allowances, as is from time to time determined by the Salaries and Allowances Tribunal.

(3) The Commissioners shall be entitled to such leave of absence and be subject to such other conditions of service, as are from time to time applicable to officers of equivalent status.

(4) Where a Commissioner, immediately prior to his appointment occupied an office in the Public Service under and subject to this Act, he shall continue to retain his existing and accruing rights, including his rights under the Superannuation and Family Benefits Act, 1938, as if his service as a Commissioner were service as an officer in the Public Service under and subject to this Act.

9. (1) Any Commissioner may be suspended from his office by the Governor, but shall not be removed from office except as provided in this section. **Suspension and removal.**

(2) There shall be laid before both Houses of Parliament a full statement of the grounds of suspension of a Commissioner within seven sitting days after such suspension, if Parliament is in session and actually sitting, or if Parliament is not in session or not actually sitting, within seven sitting days after the commencement of the next session or sitting.

(3) A Commissioner who has been so suspended shall be restored to office unless each House of Parliament, within twenty-one sitting days after the statement referred to in subsection (2) of this section has been so laid before it, presents to the Governor an address praying for the removal of the Commissioner on the grounds of proved misbehaviour or incapacity.

(4) The Governor may remove any Commissioner from office on an address praying for his removal on the grounds of proved misbehaviour or incapacity being presented to the Governor by each House of Parliament in the same session of Parliament.

Vacation
of office.

10. The office of any Commissioner becomes vacant if—

- (a) he is removed from office under section 9;
- (b) he engages in any paid employment outside the duties of his office, without the approval of the Governor;
- (c) he becomes an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (d) he becomes permanently incapable of performing his duties as a Commissioner;
- (e) he absents himself from duty for any period in excess of seven days in any period of twelve months, other than—
 - (i) any period of leave of absence to which he is entitled; or
 - (ii) any other period of leave of absence approved by the Governor;
- (f) he resigns his office by writing under his hand addressed to the Governor; or
- (g) his term of appointment expires and he is not re-appointed.

11. (1) The Chairman shall preside at all meetings of the Board at which he is present and the Deputy Chairman shall preside at all meetings of the Board at which he, but not the Chairman, is present. Procedure.

(2) At a meeting of the Board—

- (a) two Commissioners constitute a quorum;
- (b) each Commissioner, including the Chairman and the Deputy Chairman, is entitled to one vote only on the determination of any question;
- (c) a question arising at the meeting shall be determined by a majority of the votes of the Commissioners present, and, where there is an equality of votes, the consideration of the question shall be deferred until a later meeting of the Board.

12. (1) The Board may, by instrument in writing, delegate to any Commissioner, officer or other person, either generally or to the extent provided in the instrument of delegation, all or any of its powers and functions under this Act, except this power of delegation, so that the delegated powers and functions may be exercised and performed by the delegate in accordance with the instrument of delegation. Delegation.

(2) Every delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power or function by the Board.

(3) If in pursuance of any delegation given to him, any delegate of the Board makes any recommendation with regard to any Department, the Permanent Head of that Department may request that the recommendation be referred to the Board, and in that event the recommendation of the delegate shall not be deemed to be a recommendation of the Board unless it is endorsed by the Board.

Immunity.

13. No action shall be brought or maintained against the Board or any person who is, or has been, a Commissioner or a delegate of the Board, in respect of anything done or omitted to be done by or on behalf of the Board, the Commissioner or the delegate under or for the purposes, or apparently under or for the purposes, of this Act.

*Division 2.—Functions and Powers.*Functions
and
powers.

14. (1) The functions of the Board are to promote and maintain effective, efficient, and economic management and operation of the Public Service of the State.

(2) The Board is hereby empowered to do all things it considers necessary, expedient, or desirable to discharge the above functions and to exercise all its other powers expressed or implied.

(3) Without limiting the generality of the powers as provided by subsection (2), the Board has, subject to sections 28, 29 and 49, exclusive authority to—

- (a) create, transfer, and abolish offices;
- (b) classify, raise, lower, or otherwise alter the classification of offices or work;
- (c) appoint, transfer, or promote officers;
- (d) determine salaries or salary rates applicable to particular offices or classes of office in all cases in which such matters are not determinable by the Salaries and Allowances Tribunal;
- (e) determine salaries, salary ranges, or allowances for officers and determine the conditions under which such salaries, salary ranges, or allowances are payable in all cases in which such matters are not determinable by the Salaries and Allowances Tribunal; and
- (f) retire, dismiss, call upon to resign, or otherwise terminate the services of officers.

15. The Board shall furnish to the Governor, for presentation to Parliament, at least once in each year, a report on the condition and efficiency of the Public Service. Reports.

16. The Board and persons authorised by it in that behalf may enter the premises of any Department for the purpose of discharging the functions and exercising the powers of the Board. Power of entry.

17. The Board may conduct such inspections, inquiries and investigations as the Board considers necessary for the purposes of this Act. Inspections, inquiries and investigations.

18. (1) The Board may at any time summon any person whose evidence appears to be material to the determining of any subject of inspection, inquiry, or investigation under this Act, and any person so summoned shall attend at such place and time as is specified in such summons and produce any official or public books, documents, or writings in his custody or control material to the inquiry, and the Board may examine such person upon oath touching any matter to be inquired into. Power to summon witnesses and take evidence on oath.

(2) If without reasonable cause any person not being an officer summoned pursuant to this section, after being paid or tendered his reasonable expenses, neglects or fails to appear or refuses to be sworn or to answer any question put to him by the Board or to produce all books, documents, or writings pursuant to such summons, he shall be liable to pay a penalty not exceeding three hundred dollars, to be recovered by any authorised officer in any court of competent jurisdiction.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers, or documents if their contents would tend to incriminate him.

(4) On any matter before the Board, it shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself in such manner as it thinks fit.

(5) The Board may determine fees and allowances for persons summoned to appear before the Board under this section.

Administra-
tive
Instructions
and their
effect.

19. (1) To the extent that it is practicable to do so, the Board may discharge its functions and exercise its powers by Administrative Instructions published in the Public Service Notices, and such Administrative Instructions shall have effect according to their tenor unless they are inconsistent with or repugnant to other provisions of this Act.

(2) Administrative Instructions may be given under this section—

(a) so as to apply—

(i) generally or in a particular class of case or in particular classes of cases;

(ii) at all times or at a specified time or at specified times; and

(iii) throughout the State or in a specified part or specified parts of the State;

(b) so as to require a matter affected by them to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;

(c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority;

(d) so as to provide that, in specified cases or a specified class of case or specified classes of cases, whether on specified conditions or unconditionally, persons or things of a

class or classes of persons or things may be exempted from the provisions of this Act or the Administrative Instructions, or both, either wholly or to such extent as is specified; and

(e) so as to—

- (i) revoke earlier Administrative Instructions in whole or in part;
- (ii) revoke earlier Administrative Instructions in whole or in part, and substitute other Administrative Instructions for those which have been so revoked; or
- (iii) vary earlier Administrative Instructions.

(3) In subsection (2) “specified” means specified in the Administrative Instructions.

PART III.—THE PUBLIC SERVICE.

Division 1.—General.

20. The Public Service shall be constituted by Departments and Sub-Departments. Constitution of Public Service.

21. The Governor may, on the recommendation of the Board— Departments.

- (a) establish Departments;
- (b) amalgamate or divide existing Departments;
- (c) abolish Departments; and
- (d) alter the designation of Departments.

22. The Governor may, on the recommendation of the Board— Sub-Departments.

- (a) establish Sub-Departments as parts of Departments;

- (b) amalgamate or divide existing Sub-Departments;
- (c) abolish Sub-Departments; and
- (d) alter the designation of Sub-Departments.

Organisation
of Depart-
ments
substituted,
amalgamated
or divided.

23. Where Departments are established in lieu of existing Departments or by the amalgamation or division of existing Departments, the Board may, by notice published in the Public Service Notices, specify the disposition of offices and officers, the classifications and titles applicable to offices and officers and such other consequential changes which appear necessary to give effect to the change in Departments.

Organisation
of Sub-
Departments
substituted,
amalgamated
or divided.

24. Where Sub-Departments are established in lieu of existing Sub-Departments or by the amalgamation or division of existing Sub-Departments, the Board may, by notice published in the Public Service Notices, specify the disposition of offices and officers, the classification and titles applicable to offices and officers and such other consequential changes which appear necessary to give effect to the change in Sub-Departments.

Absorbed
personnel.

25. (1) Where a body or an organisation becomes a part of the Public Service and a person who was employed by that body or organisation immediately prior to it doing so receives by reason thereof an appointment as an officer within the meaning of this Act, that appointment is not subject to the provisions in or under this Act relating to appeals against promotions.

(2) Where, in respect of an appointment referred to in subsection (1), the Board determines that the salary and allowances payable to the officer shall be at a rate less than was payable to him as employee of the body or organisation immediately prior to it

becoming part of the Public Service, the officer may, in the manner prescribed under the Public Service Arbitration Act, 1966, appeal to the Arbitrator appointed under that Act against any provision of that determination, and notwithstanding any provision of that Act, the Arbitrator has jurisdiction to hear and determine the appeal

26. There shall be a Permanent Head for each Department. Permanent
Heads.

27. The Permanent Head of a Department— Functions
of
Permanent
Head.

- (a) shall be responsible to the Minister for the general management of the Department; and
- (b) shall consult and work with the Board for the purpose of achieving the most effective, efficient, and economic management and operation of the Department.

28. (1) On the recommendation of the Board, the Governor may, by a declaration published in the Public Service Notices, designate an office as a Senior Office wherein the holder of the office is required to exercise the more responsible administrative or professional, or both, functions of the Public Service. Senior
Offices.

(2) On the recommendation of the Board, the Governor may, by a subsequent declaration so published, cancel or alter a declaration made under this section and where he does so the subsequent declaration has effect according to its tenor.

29. (1) On the recommendation of the Board, the Governor may appoint any person, whether an officer or not, to fill a vacancy in the office of a Permanent Head or a vacancy in a Senior Office. Appoint-
ment of
Permanent
Heads and
Senior
Officers.

(2) In making an appointment under subsection (1), the Governor may, on the recommendation of the Board, specify a term of appointment not exceeding seven years, and if he does so the appointment shall have effect accordingly.

(3) Where a Permanent Head or Senior Officer, immediately prior to his appointment as such under this section occupied an office under and subject to this Act, he shall continue to retain his existing and accruing rights, including his rights under the Superannuation and Family Benefits Act, 1938, and if he resigns his office as Permanent Head or Senior Officer or that office is abolished or the term of that office expires by effluxion of time, other than by his attaining the age of sixty-five years, and he is not re-appointed, he shall be entitled to be appointed to an office not lower in status than the office which he occupied immediately prior to his appointment under this section, and if he then accepts an appointment to an office in the Public Service, subsection (4) of section 6 of the Superannuation and Family Benefits Act, 1938, does not apply to or in relation to him.

(4) Where the Board is satisfied after due inquiry that a Permanent Head, or Senior Officer is not discharging his duties efficiently, the Governor may, on the recommendation of the Board, terminate his services in the Public Service or transfer him to some other position.

Particular
employ-
ments.

30. Without limiting the generality of the powers of the Board as provided by subsection (2) of section 14, the Board may—

- (a) employ persons on a full-time, part-time, or casual basis and determine the terms and conditions of employment, including rates of remuneration, of such persons either generally or in a particular case; and
- (b) engage a person under a contract for services upon such terms and conditions, including the rate of remuneration, as the Board thinks fit.

31. (1) In this section "government employee" means a person who—

Appoint-
ment of
"government
employee"
as an
officer.

- (a) is a Government officer under and within the meaning of section 11A of the Industrial Arbitration Act, 1912; and
- (b) is not an officer within the meaning of this Act, but is employed to assist in the performance of duties ordinarily performed by or within a Department or of related duties,

but does not include a person appointed under the provisions of an Act other than this Act where the office to which he is appointed is expressly created by that Act and his appointment is for a term fixed under the provisions of that other Act.

(2) Where a "government employee" receives an appointment as an officer within the meaning of this Act that appointment is not subject to the provisions in and under this Act relating to appeals against promotions.

32. (1) Any person who has been continuously employed as a temporary officer for a period exceeding five years, and whose duties are similar to those of a permanent officer, may apply to the Board for appointment as a permanent officer.

Applications
by
temporary
officers to
become
permanent
officers.

(2) The Board shall determine any application made pursuant to subsection (1) and an appeal shall lie to The Public Service Appeal Board established by Part III of the Public Service Arbitration Act, 1966 from any determination of the Board so made.

33. (1) The provisions of this section apply notwithstanding any contrary provisions in or under any other Act irrespective of whether those contrary provisions came into force before or after, or contemporaneously with, the coming into operation of this Act.

Restrictions
on certain
appoint-
ments
outside the
Public
Service.

(2) A person shall not be appointed to a public office the duties of which are ordinarily performed by or within a Department or to be performed on behalf of a Department except with the prior approval of the Board and in accordance with such directions, if any, as may be given by the Board.

(3) Where, pursuant to the provisions of an Act that is prescribed in regulations for the purposes of this subsection, there is conferred on the Governor, a Minister, or any authority, body or person the power, (however expressed) to appoint, employ or engage any employee or person, that power shall not be exercised except with the prior approval of the Board and in accordance with such directions, if any, as may be given by the Board.

(4) For the purposes of this section the Board may approve the making of a particular appointment or the making of appointments of a class or description specified in the instrument of approval and may give directions in respect thereof.

Advertisements of vacant offices.

34. When an office is vacant or about to become vacant the Board, on being satisfied that the vacant office should be advertised, shall advertise the vacancy in the manner prescribed in Administrative Instructions.

Division 2.—Promotions.

Appeals against recommendations for promotions.

35. (1) A permanent officer who was an applicant for a vacant office and who considers he has a better claim to promotion to the vacancy than the officer recommended for promotion may, subject to subsections (2) and (3), appeal against such recommendation in the manner and within the time prescribed in Administrative Instructions, and stating the grounds of his appeal.

(2) A right of appeal shall exist only in respect of an office or class of office prescribed in regulations as an appealable office.

(3) Where in respect of the vacant office there is a relevant union, a permanent officer applicant has the right of appeal under this section—

- (a) if he was, at the time he made his application for promotion to the vacancy, a member of the relevant union;
- (b) if he was not, at that time, a member of the relevant union but is employed in the Department in which the vacancy occurs and all the other applicants for promotion to the vacancy were not, at that time, members of the relevant union; or
- (c) if, at that time, he was not a member of the relevant union but held a certificate of exemption issued under the provisions of section 61B of the Industrial Arbitration Act, 1912,

and not otherwise, unless the Minister of the Crown for the time being charged with the administration of this Act declares upon special grounds that this subsection does not apply in respect of the vacancy.

(4) For the purposes of and in relation to an appeal under this Division—

“union” means an industrial union of workers within the meaning of the Industrial Arbitration Act, 1912; and

“relevant union” means a union that is party to an award or industrial agreement under the Industrial Arbitration Act, 1912 or the Public Service Arbitration Act, 1966 whereby the terms and conditions of employment appertaining to the vacant office are or will be regulated.

36. (1) An appeal lodged pursuant to section 35. shall be heard by a Promotions Appeal Board which shall consist of three members and shall comprise the following persons—

Promotions
Appeal
Board.

- (a) the person for the time being holding the office of Public Service Arbitrator under the Public Service Arbitration Act, 1966, who shall be the Chairman;

- (b) an officer nominated by the Public Service Board; and
- (c) an officer nominated by the relevant union unless—

- (i) the appellant is not a member, or if there is more than one appellant all the appellants are not members, of that union;
- (ii) there is no relevant union; or
- (iii) there is a relevant union and it fails to nominate an officer at the latest fourteen clear days before the date of hearing,

in which case the Promotions Appeal Board shall include,

- (iv) if there is only one appellant, an officer nominated by the appellant;
- or
- (v) if there is more than one appellant, an officer nominated unanimously by all the appellants, or in default of an agreement thereon an officer selected by the Chairman of the Promotions Appeal Board from officers nominated respectively by the appellants,

and each nomination under this subsection shall be in writing duly signed on behalf of the Public Service Board or the relevant union or by the appellant or appellants, as the case requires, and delivered to the Secretary to the Promotions Appeal Board.

(2) The Governor may appoint a person as deputy of the Chairman to act in his place during any period for which he is unavailable for any reason to hear an appeal or appeals, and the deputy, while so acting, has in relation to the appeal or appeals all the powers, functions, and duties of the Chairman.

(3) A nomination under subsection (1) by the Public Service Board or a relevant union may be in respect of an appeal or appeals, but the Public Service Board or a relevant union, as the case requires, may nominate another officer as the deputy of an officer nominated under subsection (1) to act in his place for any reason to hear an appeal or appeals, and the deputy, while so acting, has in relation to the appeal or appeals all the powers, functions, and duties of the officer nominated under subsection (1).

37. The person for the time being holding the office of Secretary to The Promotions Appeal Board established under the Government Employees (Promotions Appeal Board) Act, 1945 shall be Secretary to the Promotions Appeal Board constituted under section 36.

Secretary
to
Promotions
Appeal
Board.

38. (1) The Promotions Appeal Board shall meet for the despatch of business as often as is required, and as soon as is reasonably possible after an appeal is lodged shall fix the earliest convenient date for hearing the appeal.

Procedure.

(2) The Promotions Appeal Board shall keep a record of its proceedings and decisions, which shall be available for future reference by any party associated with an appeal.

39. The jurisdiction of the Promotions Appeal Board shall be exercised by all the members thereof sitting together, and where all the members are not unanimous upon any question, the decision of the majority of those members shall prevail and shall be deemed to be the decision of the Promotions Appeal Board.

Jurisdiction.

40. (1) The Promotions Appeal Board may at any stage of the hearing of an appeal decline to hear it further and may summarily dismiss the same on the ground that in the opinion of that Board it is frivolous, unreasonable, or vexatious.

Frivolous,
unreason-
able, or
vexatious
appeals.

(2) The Promotions Appeal Board may, if it thinks fit, order an appellant to pay to the Treasurer of the State a sum not exceeding \$25 if, in the opinion of that Board, his appeal is frivolous, unreasonable or vexatious.

(3) Any sum so ordered may be recovered in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owing to the Crown.

Hearing of
appeals.

41. (1) The Promotions Appeal Board shall hear all appeals in public except when by its own unanimous decision it directs that any appeal shall be heard in private.

(2) In the hearing and determination of every appeal the Promotions Appeal Board shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms and shall not be bound by any laws or rules of evidence, but may inform its mind on the matter in such a way as it thinks fit.

(3) The Promotions Appeal Board shall have in relation to appeals under this Act all the powers of a Royal Commission under the Royal Commissions Act, 1968 and any reference to the Chairman of a Royal Commission under that Act shall in relation to such appeals be deemed to be a reference to the Chairman of the Promotions Appeal Board.

Full enquiry
and
decision
is final.

42. (1) The Promotions Appeal Board shall make full enquiry into the claims of the appellant and those of the applicant recommended.

(2) Where an appeal is upheld the appellant shall be promoted to the vacant office and the decision of the Promotions Appeal Board in every case shall be final.

PART IV.—DISCIPLINE.

43. This Part applies to and in relation to all officers and all other persons who are not officers but are being given assistance by the Board in a course of training, and the word “officer” in this Part shall be read and construed to include those other persons.

Application
and
interpreta-
tion.

44. (1) Every officer who—

Offences
and
penalties.

- (a) disobeys or disregards a lawful order made or given by any person or body having authority to give such order;
- (b) commits any breach of the provisions of this Act;
- (c) commits any act of misconduct;
- (d) is negligent or careless in the discharge of his duties; or
- (e) is inefficient or incompetent and such inefficiency or incompetency appears to arise from causes within his own control,

is guilty of an offence.

(2) An officer who is guilty of an offence under subsection (1) is, subject to this Act, liable to any one or more of the following penalties—

- (a) reprimand;
- (b) transfer to another office;
- (c) transfer to another Department;
- (d) a fine not exceeding \$250;
- (e) reduction in salary;
- (f) reduction in classification;
- (g) requirement to resign;
- (h) dismissal.

Powers re
offences.

45. (1) Where it appears to the Permanent Head or the Board that an officer other than a Permanent Head is guilty of an offence under section 44 the Permanent Head or the Board may do any one or more of the following things—

- (a) give the officer an opportunity of submitting an explanation;
- (b) charge the officer with the offence;
- (c) suspend the officer from duty,

but where it appears to the Permanent Head that the offence of which the officer is guilty is a minor one, the Permanent Head may reprimand him or fine him a sum not exceeding \$25, without charging the officer with the offence, and if the officer objects to the reprimand or fine within seven days after the reprimand or fine is imposed and so notifies the Permanent Head, the Permanent Head shall cancel the reprimand or fine and the Permanent Head shall charge the officer with the offence.

(2) An officer who is responsible for the work and discipline of other officers in a district or in a branch or section of a Department may—

- (a) charge any of those officers who appear to be guilty of an offence under section 44; and
- (b) suspend any of those officers from duty pending further action by the Permanent Head,

but the powers conferred by this subsection are exercisable only in cases of emergency and any such suspension shall be immediately reported to the Permanent Head.

(3) A charge under subsection (1) or (2) shall be in writing and contain particulars of the alleged offence and shall require the person charged to state in writing whether he admits or denies the truth of the charge within such time as is specified in the charge.

(4) Where it is shown to the satisfaction of the Permanent Head or the Board that it is impracticable to proceed promptly with the inquiry into the charge the Permanent Head or the Board may remove the suspension, if any, for such period as is appropriate in the circumstances.

46. (1) Where an officer admits the truth of a charge to the Permanent Head or the Permanent Head, after inquiry, finds the charge to be proved, the Permanent Head may, subject to this Act—

Proceedings
on charges.

- (a) reprimand him;
- (b) transfer him to another office;
- (c) fine him a sum not exceeding \$50; or
- (d) recommend to the Board that one or more of the other penalties specified in subsection (2) of section 44 be imposed on the officer,

and where he does so recommend, the Board may accept or reject the recommendation in whole or in part and take action accordingly.

(2) Where the officer admits the truth of the charge to the Board or the Board, after inquiry, finds the charge to be proved, the Board may impose one or more of the penalties specified in subsection (2) of section 44.

47. An officer fined or transferred to another office by the Permanent Head under the provisions of subsection (1) of section 46 may appeal to the Board in the manner prescribed in Administrative Instructions, and the Board may confirm, reverse, or vary the decision of the Permanent Head.

Appeal
against
certain
penalties.

48. (1) Where it appears to a Permanent Head that an officer is guilty of an offence of such a serious nature or in such circumstances as to warrant proceedings or other action by the Board, the Permanent Head may refer the matter to the Board for its determination.

Notice by
Permanent
Head to the
Board and
powers of
the Board.

(2) The Permanent Head shall notify the Board in the manner and within the time prescribed by Administrative Instruction of all proceedings and other actions taken by him under sections 45, 46 and 50.

(3) The Board—

- (a) may confirm any action taken by the Permanent Head under sections 45, 46, and 50; or
- (b) may reverse or vary any such action and without limiting the generality thereof may do any one or more of the following things—
 - (i) require an officer to submit in writing to the Board a further explanation of the offence;
 - (ii) vary the charge or charges made by the Permanent Head;
 - (iii) charge the officer with other offences;
 - (iv) vary the penalty or penalties imposed by the Permanent Head;
 - (v) rectify any irregularity in the actions of the Permanent Head.

Charges
against
Permanent
Head.

49. (1) Where it appears to the Minister or the Board that a Permanent Head who has been appointed under and subject to the provisions of this Act is guilty of an offence under section 44 the Minister or the Board may do any one or more of the following things—

- (a) give the Permanent Head an opportunity of submitting an explanation;
- (b) charge the Permanent Head with the offence;
- (c) suspend the Permanent Head from duty.

(2) Where the Permanent Head, in writing, admits the truth of the charge to the Board or the Board after inquiry, finds the charge to be proved, it shall furnish a report to the Governor, such report to include a recommendation as to the penalty or penalties to be imposed, which may be any one or more of the penalties referred to in subsection (2) of section 44.

(3) On receiving the report and recommendation the Governor may impose a penalty or penalties included in the recommendation.

50. The Permanent Head or the Board, as the case requires, shall notify an officer charged with an offence whether or not the charge has been found proved and if found proved the penalty imposed, and such notification shall be in writing in the manner and within the time prescribed by Administrative Instructions.

Notice of
decision.

51. Where in respect of a charge against an officer for an offence under this Part, the officer is aggrieved with a decision or recommendation made by the Board, the officer may appeal to The Public Service Appeal Board established by Part III of the Public Service Arbitration Act, 1966, and that Board shall have jurisdiction to hear and determine the appeal under and subject to the provisions of that Act.

Appeal
against
decision or
recommen-
dation.

52. Notwithstanding the provisions of The Criminal Code, where an officer during his period of service is convicted, on indictment or otherwise, of an indictable offence, or is convicted of such other offence that is prescribed in regulations or that is one of a class of offences so prescribed, in addition to any action or penalty ordered by a court in respect of the offence, the Board may impose any one or more of the penalties referred to in subsection (2) of section 44 except the penalties referred to in paragraphs (d), (e), and (f) thereof.

Conviction
for an
indictable
offence.

Payment
of fines.

53. Where a fine is imposed on an officer under this Part the officer shall pay the amount of the fine forthwith to the Treasurer of the State and where the officer fails to do so that amount may be recovered in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owing to the Crown.

PART V.—MISCELLANEOUS.

Officer
not to
engage
in duties
unconnected
with his
office.

54. (1) Except with the written permission of the Board, which permission may at any time be withdrawn, an officer shall not—

- (a) accept or continue to hold an office in or under the Government or a paid office in or under any municipality or other public body corporate;
- (b) accept or continue to hold or discharge the duties of or be employed in a paid office in connection with any banking, insurance, mining, mercantile, or other commercial business, whether the same be carried on by any corporation, company, firm, or individual;
- (c) engage in or undertake any such business, whether as principal or agent;
- (d) engage or continue in the private practice of any profession; or
- (e) accept or engage in any employment for reward other than in connection with the duties of his office or offices under the State or the Commonwealth.

(2) Subsection (1) does not apply to or in relation to any case or class of case prescribed by the Board in Administrative Instructions to be excepted from the operation of that subsection.

55. No member of Parliament shall interview or communicate with the Board or any Commissioner or officer of the Board regarding the appointment of any person to a position in the Public Service.

Restriction on communications by members of Parliament.

56. (1) In the event of the address for the time being of an officer being unknown to the Board or any Permanent Head, as the case may be, all notices, orders, or communications to or for such officer shall be posted to the last known address of the officer, and a notification of the act of such posting shall be published in the Public Service Notices.

Service where address unknown.

(2) Compliance with subsection (1) of this section shall be deemed a sufficient service of any notice, order, or communication on an officer whose address is unknown.

57. When it appears to the Minister or Permanent Head of any Department necessary or expedient for the more effective, economic, or efficient working of the Department or any Sub-Department or branch thereof that any particular disposition of officers and re-arrangement of work should be effected, the matter shall be referred to the Board for consideration and action.

Reorganisation within Departments.

58. Where in or by any Act, Order in Council, rule, regulation, by-law, contract, or agreement any duty, obligation, right, or power is imposed or conferred upon any officer in his capacity as an officer, such duty, obligation, right, or power may be performed or exercised by any officer directed by the Governor to perform and exercise the duties, obligations, rights, and powers of such first-mentioned officer during his temporary absence or incapacity, in the same manner and to the same extent in all respects as the same might have been respectively performed or exercised by such first-mentioned officer, and everything so done under the provisions of this section shall be as good and effectual for all purposes and against all persons whatsoever as if done by such first-mentioned officer.

Performance of duties and powers of officer in his absence.

Long Service
Leave,
Recreation
Leave, and
Public
Service
Holidays.

59. (1) Each officer who has completed—

- (a) a period of seven years of continuous service in a permanent capacity; or
- (b) ten years of continuous service in a temporary capacity,

but not including service prior to his attaining the age of eighteen years shall be entitled to three months of long service leave on full pay.

(2) Where an officer has continuous service in both a temporary and permanent capacity the date on which he shall become entitled to long service leave shall be determined by taking into account on a proportional basis the periods of temporary and permanent service.

(3) Each 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) Each officer is entitled to four weeks of recreation leave on full pay for each year of service, but the Board may grant to any officer or category of officers, annual leave of absence for recreation in excess of four weeks in any one year on full pay, if it 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.

(5) Each officer is entitled to—

- (a) public holidays and public half-holidays applicable to his location; and
- (b) such public service holidays as are prescribed by regulations,

on full pay.

Regulations.

60. (1) The Governor, on the recommendation of the Board, may make such regulations as he considers necessary for the purposes of this Act.

(2) Regulations may be made under this section—

(a) so as to apply—

- (i) generally or in a particular class of case or in particular classes of cases;
- (ii) at all times or at a specified time or at specified times; and
- (iii) throughout the State or in a specified part or specified parts of the State;

(b) so as to require a matter affected by them to be—

- (i) in accordance with a specified standard or specified requirement; or
- (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;

(c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority; and

(d) so as to provide that, in specified cases or a specified class of case or specified classes of cases whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.

(3) In subsection (2) “specified” means specified in the regulations.

PART VI.—TRANSITIONAL.

61. Nothing in this Part affects the operation of the Interpretation Act, 1918. Saving.

62. In this Part—

“former Board” means the Public Service Board established under and subject to the repealed Act;

Interpre-
tation.

“new Board” means the Public Service Board established under and subject to this Act;

“proclaimed date” means the date on which this Act comes into operation;

“repealed Act” means the Act repealed by section 4.

Continuation.

63. (1) On and after the proclaimed date—

- (a) the former Board is preserved and shall continue as the new Board;
- (b) each person who held an office on the former Board immediately prior to the proclaimed date shall be deemed to have been appointed under and subject to this Act to the corresponding office on the new Board and his term in that office shall be deemed to have commenced on the date on which his term in the corresponding office in the former Board commenced;
- (c) all Departments and Sub-Departments of the Public Service, and all designations of such Departments and Sub-Departments, in existence immediately prior to the proclaimed date under and subject to the repealed Act shall be deemed to have been established under section 21 or 22, as the case requires, and shall continue in existence unless and until they are lawfully altered or abolished under this Act;
- (d) all persons who were officers, temporary employees, trainees, or cadets immediately prior to the proclaimed date under and subject to the repealed Act shall be deemed to have been respectively appointed or engaged as permanent officers, temporary officers, trainees, or cadets under and subject to this Act; and
- (e) all offices, classification of offices and work, all salaries or salary rates applicable to particular offices or classes of offices, all salaries and salaries ranges and allowances

for officers, all rates of remuneration and allowances for other persons appointed or engaged under and subject to the repealed Act, and all entitlements and rights of such officers and other persons in respect of holidays and leave that were in force immediately prior to the proclaimed date shall continue in force unless and until they are lawfully altered in accordance with this Act.

(2) Where a person is deemed to have been appointed or engaged under subsection (1) he shall continue to retain his existing and accruing rights including his rights, if any, under the Superannuation and Family Benefits Act, 1938, as if his service under and subject to the repealed Act were service under and subject to this Act.

64. Provisions in or under Division 2 of Part III of this Act do not apply to or in relation to recommendations for promotions which recommendations were made before the proclaimed date but the law in force to and in relation thereto immediately prior to the proclaimed date shall so apply.

Recommendations for Promotions.

65. Provisions in or under Part IV of this Act do not apply to or in relation to offences committed or alleged to have been committed before the proclaimed date but the law in force to and in relation thereto immediately prior to the proclaimed date shall so apply.

Discipline.

66. A reference, however expressed, in any other Act or in any regulation, notice, proclamation, or statutory instrument of any kind made, published or in force under this or any other Act to the Public Service Commissioner or the former Board shall unless the context requires otherwise, be read and construed as a reference to the new Board.

References to Public Service Commissioner and former Board.