

PUBLIC SERVICE.

No. 81 of 1970.

AN ACT to amend the Public Service Act, 1904-1967.

[Assented to 30th November, 1970.]

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, 1970.*

Reprinted as
approved for
reprint, 10th
July, 1967
and amended
by Act No.
60 of 1967.

(2) In this Act the Public Service Act, 1904-1967 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Public Service Act, 1904-1970.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on the date on which it receives the Royal Assent. Commence-
ment, etc.

(2) Sections 3 to 14, both inclusive, of this Act shall come into operation on a date to be fixed by proclamation.

(3) A reference in section 15, 16, 18 or 19 of this Act to the Board shall, until the coming into operation of sections 3 to 14, both inclusive, of this Act, be read and construed as a reference to the Public Service Commissioner.

3. Section 5 of the principal Act is amended—

S. 5
amended.

(a) by adding after the section number, "5." the subsection designation "(1)";

(b) by deleting the interpretation, "Commissioner" and substituting the following interpretations—

"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 seven of this Act.

"Commissioner" means any Commissioner of the Board appointed under section seven of this Act. ;

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

"Deputy Chairman" means the Commissioner appointed to be Deputy Chairman of the Board under section seven of this Act. ; and

(d) by adding a subsection as follows—

(2) 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 shall, unless the context requires otherwise, be read and construed as a reference to the Public Service Board established by this Act. .

S. 7 re-
pealed and
re-enacted.

4. Section 7 of the principal Act is repealed and re-enacted, as follows—

Constitution
of Public
Service
Board.

7. (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 powers and functions and perform the duties and obligations conferred and imposed upon it by this Act.

(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) of this section—

- (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) of this section, 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 be deemed to have become vacant at the time of his appointment as Chairman.

(5) Subject to subsection (6) of this section, 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 be deemed to have 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) Where any Commissioner, immediately prior to his appointment—

- (a) occupied an office under this Act; or
- (b) occupied the office of Public Service Commissioner under the Public Service Act, 1904-1967,

he shall, if he resigns his office or if his term of office expires by effluxion of time, other than by his attaining the age of sixty-five years, and he is not re-appointed, be entitled to be appointed to an office not lower in status than—

- (c) in a case referred to in paragraph (a) of this subsection, the office which he so occupied immediately prior to his appointment as a Commissioner; or
- (d) in the case of a Commissioner who so occupied the office of Public Service Commissioner, the office which he occupied immediately prior to his appointment to the office of Public Service Commissioner. .

5. Section 7A of the principal Act is repealed.

S. 7A re-
pealed.

S. 8 re-
pealed and
re-enacted.

6. Section 8 of the principal Act is repealed and re-enacted, as follows—

Acting Com-
missioners.

8. 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 and obligations of a Commissioner.

S. 9 repealed
and re-
enacted.

7. Section 9 of the principal Act is repealed and re-enacted as follows—

Salaries, etc.,
of Com-
missioners.

9. (1) The Chairman shall receive a salary at such rate per annum, being not less than sixteen thousand nine hundred and ninety-five dollars, as is from time to time determined by the Governor.

(2) The Commissioners other than the Chairman shall receive salaries at such rates per annum as are respectively from time to time determined by the Governor.

(3) 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 Governor.

(4) 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.

(5) Where a Commissioner, immediately prior to his appointment—

- (a) occupied an office under this Act; or
- (b) occupied the office of Public Service Commissioner under the Public Service Act, 1904-1967,

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 under this Act.

8. The principal Act is amended by adding a section as follows—

S. 9A added.

9A. (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
or removal
of Commis-
sioner.

(2) There shall be laid before both Houses of Parliament a full statement of the grounds of suspension of a Commissioner within seven 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 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, present 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.

(5) If a Commissioner is restored to office, he shall receive arrears of salary in full from the date of his suspension.

9. The principal Act is amended by adding a section as follows—

S. 9B added.

9B. The office of any Commissioner becomes vacant if—

Office, how
vacated.

(a) he is removed from office under section nine A of this Act;

- (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.

S. 9C added.

10. The principal Act is amended by adding a section as follows—

Meetings of
the Board.

9C. (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.

(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; and

- (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. .

11. The principal Act is amended by adding a section as follows— S. 9D added.

9D. 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. . Exemption from personal liability.

12. The principal Act is amended by adding a section as follows— S. 9E added.

9E. (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 by Board.

(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. .

S. 10
amended.

13. Subsection (1) of section 10 of the principal Act is amended—

- (a) by deleting the passage, “Commissioner shall, as far as practicable, personally” in line five and substituting the words, “Board shall”; and
- (b) by substituting for the word, “Commissioner” in the penultimate and last lines, the word, “Board”.

S. 15 re-
pealed.

14. Section 15 of the principal Act is repealed.

S. 30A added.

15. The principal Act is amended by adding after section 30, the following section—

Cadetships.

30A. (1) The Board may—

- (a) create in any Department cadetships for the training of persons in work requiring in its performance special professional, technical or other skills;
- (b) appoint persons to cadetships and, subject to subsection (3) of this section, determine the terms and conditions of employment and service of persons so appointed; and
- (c) require any person who desires to be appointed to a cadetship to enter into an agreement with the Board or any officer authorised for the purpose by the Board, in such form as is approved by the Board.

(2) An agreement referred to in paragraph (c) of subsection (1) of this section may include provisions—

- (a) specifying the period for which the person appointed to a cadetship is required to serve as a cadet and the period for which he is required to serve in the Public Service upon the completion of his cadetship;

- (b) authorising the Board to terminate the agreement in any of the circumstances specified therein;
- (c) requiring the cadet and his parents or guardian or any one or more of them if parties to the agreement, to reimburse the Board, in the event of the determination of the agreement by the Board or the cadet, to the extent specified in the agreement.

(3) In determining the terms and conditions of employment and service of a person appointed to a cadetship, the Board shall not make a determination as to any matter that is inconsistent with any provision of the agreement entered into pursuant to this section by that person prior to his being so appointed.

(4) Where an agreement of the kind referred to in this section is entered into between the Board or an officer referred to in paragraph (c) of subsection (1) of this section and a person appointed to a cadetship, either alone or with other persons, the person so appointed and all other parties to the agreement shall be bound by each term and condition expressed therein, notwithstanding that the person so appointed was under the age of twenty-one years when he executed the agreement.

16. Section 42 of the principal Act is amended—

S. 42
amended.

- (a) by substituting for the word, "charges" occurring in line seven and again in line ten of subsection (4), the word, "charge", in both cases;
- (b) by repealing subsection (5) and substituting the following subsections—

(5) Where the officer, in writing, admits the truth of the charge to the Board or the Board, after inquiry, finds the charge to be proved, the Board may—

- (a) caution him;

- (b) reprimand him; or
- (c) fine him a sum not exceeding one hundred dollars,

or do any two or more of those things, and in addition thereto or in lieu thereof the Board may recommend to the Governor that—

- (d) the officer be reduced to a lower class or grade and lower salary or wages or be transferred to another office or Department, or be both so reduced and transferred;
- (e) the officer be required to resign; or
- (f) the officer be dismissed,

and, subject to section forty-five of this Act, the Governor may give effect to the recommendation, or to the recommendation as varied by the Public Service Appeal Board referred to in that section, as the case requires.

(5a) Where, pursuant to subsection (5) of this section, the Board deals with a charge admitted by, or found by it to be proved against, an officer, the Board shall also determine whether the officer is to receive any arrears of salary in respect of the whole or any part of the period or periods for which the officer was suspended pursuant to this section.

S. 45
amended.

17. Section 45 of the principal Act is amended by substituting for the word, "the" in line one, the passage, "a decision, determination or".

S. 50
amended.

18. Subsection (1) of section 50 of the principal Act is repealed and the following subsections substituted—

- (1) If an officer is convicted, on indictment or otherwise, of an indictable offence, he shall be

deemed, unless the Governor on the recommendation of the Board otherwise determines, to have forfeited his office and shall thereupon cease to perform his duties or receive his salary.

(1a) Where the Governor so determines that an officer convicted of an indictable offence shall not be deemed to have forfeited his office—

(a) the officer shall be deemed to have been suspended from his office without salary from the time of his conviction until the time of the making of the determination and for the whole of any other period prior to the time of his conviction during which he was suspended under section forty-two of this Act; and

(b) the Governor on the recommendation of the Board, may—

(i) reduce the officer to a lower class or grade and lower salary or wages; or

(ii) transfer the officer to another office or Department,

or do any one or more of those things. .

19. Section 56 of the principal Act is amended—

S. 56
amended.

(a) by deleting paragraphs (a) and (b) of subsection (4) and substituting the following paragraph—

(a) an officer may, with the approval of the Board, accumulate his entitlement up to a maximum of twelve months; and ; and

(b) by adding after subsection (4) a subsection as follows—

(4a) Nothing in subsection (4) of this section authorises the accumulation of,

or confers any entitlement to, any long service leave which, prior to the coming into operation of this subsection, could not have been lawfully accumulated or to which there was no lawful entitlement, as the case may be. .

Miscellaneous
amendments.

20. The principal Act is amended as set out in the Schedule to this Act.

THE SCHEDULE.

Provision amended.	Amendment.
Section 6	.... Delete "Commissioner" in line 18, substitute "Board".
Section 10 (2)	.... Delete "Commissioner" in line 1 and again in line 5, substitute "Board" in each case.
Section 10 (3)	.... Delete "Commissioner" in line 2, substitute "Board".
Section 10 (5)	.... Delete "Commissioner" in line 1 and again in line 6, substitute "Board" in each case.
Section 10 (6)	.... Delete "Commissioner" in line 4, substitute "Board".
Section 10 (7)	.... Delete "Commissioner" in line 1, substitute "Board".
Section 11 (1)	.... Delete "Commissioner" in line 1 and again in line 9, substitute "Board" in each case.
Section 11 (2)	.... Delete "Commissioner" in line 5, substitute "Board".
Section 13 (1)	.... Delete "Commissioner" in line 1, substitute "Board".
Section 13 (2)	.... Delete "Commissioner" in line 1, substitute "Board".
Section 14	.... Delete "Commissioner" wherever it occurs in the section, substitute "Board" in each case.
Section 16	.... Delete "Commissioner" in line 2, substitute "Board or any Commissioner".
Section 18 (1)	.... Delete "Commissioner" in line 4, substitute "Board".
Section 18 (2)	.... Delete "Commissioner" in line 5, substitute "Board".
Section 18 (3)	.... Delete "Commissioner" in line 6, substitute "Board".
Section 18 (4)	.... Delete "Commissioner" in line 2, substitute "Board".
Section 19	.... Delete "Commissioner" in line 2, substitute "Board".
Section 20 (1)	.... Delete "Commissioner" in line 1, substitute "Board".
Section 20 (2)	.... Delete "Commissioner" in lines 1 and 2, substitute "Board".

THE SCHEDULE—*continued.*

Provision amended.	Amendment.
Section 22 (2)	Delete "Commissioner" in line 1, substitute "Board".
Section 23 (2)	Delete "Commissioner" in line 10, substitute "Board".
Section 23 (3)	Delete "Commissioner" in line 9, substitute "Board".
Section 23 (4)	Delete "Commissioner" in line 4, substitute "Board".
Section 23 (5)	Delete "Commissioner" where it occurs twice in the subsection, substitute "Board" in each case.
Section 23 (7)	Delete "Commissioner" in line 2 and again in line 4, substitute "Board" in each case.
Section 24	Delete "Commissioner" in line 7, substitute "Board".
Section 25	Delete "Commissioner" in lines 13 and 14, substitute "Board".
Section 27 (1)	Delete "Commissioner" in paragraph (a), substitute "Board".
Section 27 (1)	Delete "Commissioner" in line 2 of paragraph (b), substitute "Board".
Section 27 (2)	Delete "Commissioner" in line 2, substitute "Board".
Section 28 (1)	Delete "Commissioner" in line 1, substitute "Board".
Section 28 (2)	Delete "Commissioner" in line 1, substitute "Board".
Section 29 (1)	Delete "Commissioner" in line 7, substitute "Board".
Section 29 (2)	Delete "Commissioner" in line 8, substitute "Board".
Section 29A (1)	Delete "Commissioner" in line 2, substitute "Board".
Section 29A (2)	Delete "Commissioner" in line 1, substitute "Board".
Section 29A (3)	Delete "Commissioner" in lines 4 and 5, substitute "Board".
Section 31 (1)	Delete "Commissioner" wherever it occurs in the subsection, substitute "Board" in each case.
Section 31 (2)	Delete "Commissioner" in line 2, substitute "Board".
Section 31 (3)	Delete "Commissioner" in line 4 and again in line 6, substitute "Board" in each case.
Section 31 (4)	Delete "Commissioner" in line 3 and again in line 4 of paragraph (a), substitute "Board" in each case.
Section 31 (4)	Delete "Commissioner" in line 3 of paragraph (b), substitute "Board".
Section 31 (6)	Delete "Commissioner" in lines 15 and 16, substitute "Board".
Section 32 (1)	Delete "Commissioner" in line 2 and again in line 3, substitute "Board" in each case.
Section 32 (1a)	Delete "Commissioner" in line 1, substitute "Board".

THE SCHEDULE—*continued.*

Provision amended.	Amendment.
Section 32 (2)	Delete "Commissioner" in line 2 and again in line 4, substitute "Board" in each case.
Section 33 (2)	Delete "Commissioner" in line 2, substitute "Board".
Section 34 (1)	Delete "Commissioner" in line 3, substitute "Board".
Section 34 (2)	Delete "Commissioner" in line 1 and again in line 3, substitute "Board" in each case.
Section 34 (3)	Delete "Commissioner" in line 2, substitute "Board".
Section 36	Delete "Commissioner" in line 2 and again in line 7, substitute "Board" in each case.
Section 37	Delete "Commissioner" in line 2, substitute "Board".
Section 39	Delete "Commissioner" in line 1 and again in line 13, substitute "Board" in each case.
Section 40	Delete "Commissioner" in line 7, substitute "Board".
Section 42 (3)	Delete "Commissioner" in line 7, substitute "Board".
Section 42 (4)	Delete "Commissioner" wherever it occurs in the subsection, substitute "Board" in each case.
Section 42 (6)	Delete "Commissioner" in lines 1 and 2, substitute "Board".
Section 43	Delete "Commissioner, who" in line 4, substitute "Board, which".
Section 44 (1)	Delete "Commissioner" in line 5 and again in line 7, substitute "Board" in each case.
Section 44 (1)	Delete "his" in line 9, substitute "its".
Section 44 (2)	Delete "Commissioner" wherever it occurs in the subsection, substitute "Board" in each case.
Section 44 (3)	Delete "Commissioner" in line 1, substitute "Board".
Section 45	Delete "Commissioner" in line 2, substitute "Board".
Section 48	Delete "Commissioner" in line 4 and again in line 7, substitute "Board" in each case.
Section 49	Delete "Commissioner" wherever it occurs in the section, substitute "Board" in each case.
Section 52 (4)	Delete "Commissioner" in lines 3 and 4 of paragraph (a), substitute "Board".
Section 52 (4)	Delete "he" in line 7 of paragraph (a), substitute "it".
Section 52 (4)	Delete "Commissioner" in line 3 of paragraph (b), substitute "Board". Delete "Commissioner" in line 4, substitute "Board".
Section 54 (2)	Delete "Commissioner" in line 6, substitute "Board".

THE SCHEDULE—*continued.*

Provision amended.	Amendment.
Section 55 (1)	Delete "Commissioner" in line 1 and again in line 6, substitute "Board" in each case.
Section 55 (1)	Delete "he" in line 2, substitute "it".
Section 55 (2)	Delete "Commissioner" in line 6, substitute "Board".
Section 55 (3) ...	Delete "Commissioner" in line 5, substitute "Board".
Section 56 (4)	Delete "Commissioner" in line 3, substitute "Board".
Section 56 (5)	Delete "Commissioner" in line 2, substitute "Board".
Section 56A (2)	Delete "Commissioner" in lines 8 and 9, substitute "Board".
Section 56A (3)	Delete "Commissioner" in line 5, substitute "Board".
Section 59	Delete "Commissioner" in line 10, substitute "Board".
Section 61	Delete "Commissioner" in line 2, substitute "Board".
Section 69	Delete "Commissioner" in lines 6 and 7 and again in lines 12 and 13, substitute "Board" in each case.
Section 70 (1)	Delete "Commissioner" in lines 2 and 3, substitute "Board".
Section 77 (1)	Delete "Commissioner" in line 2, substitute "Board".
Section 77 (1)	Delete "Commissioner" in lines 8 and 9 of subparagraph (i) of paragraph (f), substitute "Board".
Section 77 (1)	Delete "Commissioner" in line 3 of paragraph (i), substitute "Board".