

## PUBLIC SERVICE APPEAL BOARD.

No. 14 of 1920.

Reprinted as amended by Acts Nos. 55 of 1923 (a), 1 of 1930 (20° Geo. V., No. XXXVII) (b), 19 of 1932 (c), 29 of 1935 (d), 27 of 1937 (e), 21 of 1941 (f), 10 of 1943 (g), 42 of 1945 (h), 39 of 1948 (i) and 7 of 1949 (j), pursuant to the provisions of the Amendments Incorporation Act, 1938.

**AN ACT to establish a Public Service Appeal Board, and to prevent the unauthorised cessation of work on the part of Public Servants.**

[Assented to 3rd December, 1920.]

**BE** it enacted by the King'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:—

1. This Act may be cited as the *Public Service Appeal Board Act, 1920-1949*.

Short title.  
No. 7 of 1949,  
s. 1 (3).

2. (1) In this Act, "public servant" means and includes any person who—

Application  
of Act.

(a) is employed in any capacity in the public service of the State as an officer within the meaning of that word in the Public Service Act, 1904\*; or

(a) Assented to 22nd December, 1923. (b) Assented to 6th January, 1930.  
(c) Assented to 9th December, 1932. (d) Assented to 23rd December, 1935;  
came into operation 1st February, 1936, pursuant to proclamation published in  
*Gazette* of 31st January, 1936. (e) Assented to 18th January, 1938. (f)  
Assented to 25th November, 1941. (g) Assented to 30th September, 1943.  
(h) Assented to 30th January, 1946. (i) Assented to 21st December, 1948.  
(j) Assented to 14th September, 1949.

Section 2 of the Government Employees (Promotions Appeal Board) Act, 1945-1949, is as follows:—

This Act  
to be read in  
conjunction  
with certain  
other Acts,  
but  
provisions  
of this Act  
to prevail.

2. (1) This Act shall be read in conjunction with the Acts mentioned in the Schedule to this Act.

(2) Where the provisions of any Act mentioned in the Schedule to this Act are in any respect inconsistent with or repugnant to any provisions of this Act, the provisions of this Act shall prevail and have effect according to the tenour thereof, and, to the extent of such inconsistency or repugnancy, the provisions of the Acts mentioned in the Schedule to this Act aforesaid shall be null and void.

Note.—The Schedule referred to in subsection (1) mentions the Public Service Appeal Board Act, 1920-1943.

The numbering of the sections, etc., as in the Public Service Appeal Board Act, 1920, as reprinted in the appendix to the Sessional Volume of Statutes for the year 1930, is retained in this reprint.

\* See the Public Service Act, 1904-1948.

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(b) is employed on the teaching staff of the Education Department; or

(c) is temporarily or provisionally employed under section thirty-six of the Public Service Act, 1904\*, or as an officer of the field staff of the Forestry Department, and has been so employed continuously for at least twelve months next preceding his appeal or application to the Board; or

(d) is temporarily or provisionally employed under the regulations of the Education Department, and has been so employed for at least forty weeks during the twelve months next preceding his appeal or application to the Board, but on and after the twenty-second day of November, one thousand nine hundred and forty-eight, "public servant" does not include an officer of the Rural and Industries Bank of Western Australia.

20° Geo. V.,  
No. XXXVII.

(No. 1 of  
1930), s. 2.

No. 7 of 1949,  
s. 2 (a).

No. 7 of 1949,  
s. 2 (b).

No. 19 of 1932,  
s. 2 (1).

(2) Except as aforesaid and subject to subsections (2), (3) and (4) of section six, this Act shall not extend to public servants to whom the Public Service Act, 1904\*, does not apply.

No. 19 of 1932,  
s. 2 (2).

(3) In this Act, "Railways Department" means the department employed in connection with the Government Railways, but does not include any persons who are officers and servants of that department by virtue only of section nineteen of the Government Tramways Act, 1912†, and/or the Government Electric Works Act, 1915‡.

3.§ (1) A Board, to be known as "The Public Service Appeal Board," shall be established.

\* See the Public Service Act, 1904-1948.

† See the Western Australian Government Tramways and Ferries Act, 1948.

‡ See the State Electricity Commission Act, 1945.

§ Section three of the Public Service Appeal Board Act Amendment Act, 1943, is as follows:—

3. Section three of the principal Act<sup>1</sup>, as amended by section two of this Act shall operate and have effect in relation to appeals which at the commencement of this Act are pending before the Public Service Appeal Board as constituted under paragraph (a) of subsection (2) of section three of the principal Act<sup>1</sup> and the hearing of which has not been commenced.

<sup>1</sup> The Public Service Appeal Board Act, 1920-1941 (No. 14 of 1920, as reprinted in the Appendix to the Sessional Volume of the Statutes for the year 1930 and amended by the Acts Nos. 19 of 1932, No. 29 of 1935, No. 27 of 1937, and No. 21 of 1941).

No. 10 of  
1945, s. 3.  
Section 3 of  
the principal  
Act as  
amended to  
apply to  
appeals  
pending.

(2) The Board shall be constituted as follows:— The Board.

(a) If the appeal relates to matters with which the teaching staff of the Education Department and the Railways Department are not concerned, the Board shall consist of a judge of the Supreme Court, who shall be chairman, or, when such judge is for any reason unable to act, of a stipendiary magistrate appointed to act in place of the said judge as provided for in paragraph (aa) of this subsection who, when so acting, shall be deputy chairman; one member to be appointed by the Governor, and one member to represent the division of the public service concerned, to be elected in the prescribed manner by the members of the Civil Service Association of Western Australia.

No. 19 of 1932,  
s. 3 (1).

No. 10 of 1943,  
s. 2 (a).

20° Geo. V,  
No. XXXVII  
(No. 1 of  
1930), s. 3.

(aa) (i) For and in connection with the Board as constituted under paragraph (a) of this subsection, the Governor may appoint any stipendiary magistrate, who is nominated by the Minister to be the Deputy Chairman of the Board and to act as Chairman thereof in the place of the said Chairman whenever for any reason the Chairman is unable to act.

No. 10 of 1943,  
s. 2 (b).

(ii) If and whenever the Chairman of the Board is for any reason unable to act as such Chairman and requests the Deputy Chairman aforesaid to act in his place, the Deputy Chairman shall have and may exercise the same jurisdiction, authorities, and powers as the Chairman during the period for which he acts in the place of the Chairman pursuant to the request of the Chairman as aforesaid.

(iii) Whenever elsewhere in this Act or in any other Act any reference is made to the Chairman of the Board as constituted under paragraph (a) of this subsection, such reference shall, unless the context otherwise requires, be deemed to include the Deputy Chairman appointed under this paragraph.

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(b) If the appeal relates to matters with which the teaching staff of the Education Department only is concerned, the Board shall consist of a judge of the Supreme Court who shall be chairman, one member to be appointed by the Governor, and one member to be elected in the prescribed manner by members of the State School Teachers' Union of Western Australia.

No. 19 of 1932,  
s. 3 (1).

(bb) If the matter to be dealt with by the Board is a question arising or pending in the Railways Department and referred to the Board under subsection (4) of section six, then the Board shall consist of a judge of the Supreme Court, who shall be chairman, one member to be appointed by the Governor, and one member elected in the prescribed manner and for the prescribed term by those persons who are for the time being members of one or more of the following unions or organisations, and employed exclusively by the Railway Department, that is to say—

The West Australian Railway Officers' Union;

The West Australian Amalgamated Society of Railway Employees' Union of Workers;

The West Australian Loco. Engine-drivers, Firemen, and Cleaners' Industrial Union of Workers;

The Amalgamated Engineering Union;

The Australasian Society of Engineers;

The Federated Moulders' (Metal) Union;

The Federated Society of Boilermakers and Structural Iron and Steel Workers.

(c) If the appeal relates to matters in dispute which are common to the public servants, including the teaching staff of the Education Department, the Board shall consist of a judge of the Supreme Court, who

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shall be Chairman, and four members appointed and elected as aforesaid:

Provided that the Public Service Appeal Board, as constituted by an Order in Council published in the *Gazette* on the twenty-third day of August, one thousand nine hundred and twenty, shall be deemed to have been duly constituted under this Act and, subject to the passing of this Act, the proceedings and decisions of such Board shall have the same force and effect as if this Act had been in operation at the date of the said Order in Council, and the Board had been duly constituted under this Act:

But the members of the Board so constituted, except the Chairman, shall retire at the expiration of six months from the date of the said Order in Council.

4. Subject to the proviso to the last preceding section, every member of the Board, except the Chairman, shall hold office for one year from the day upon which he shall first take his seat on the Board by virtue of his appointment or election, and shall be eligible for re-appointment or re-election.

Tenure of office of members.

5. In the absence of any member of the Board other than the Chairman, or in case any such member is personally interested in an appeal or application, a deputy may sit in place of such member during his absence, or for the hearing of the appeal or application in which he is personally interested, and such deputy shall have all the powers and authority of a member of the Board.

Deputy member.

The provisions of section three relating to the appointment and election of members of the Board shall extend and apply to the appointment or election of deputy members of the Board.

6. (1) The Board shall have jurisdiction, subject to subsection (1a) of this section—

Jurisdiction of Board.

(a) to hear and determine any appeal by any public servant or class of public servants from the Public Service Commissioner

No. 29 of 1925.  
s. 2 (a).

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20° Geo. V.,  
No. XXXVII  
(No. 1 of  
1930), s. 4 (1).  
No. 7 of 1949,  
s. 3 (a).

(whether acting alone or in conjunction with Assistant Commissioners), the Minister of Education, or the Conservator of Forests, in respect of—

- (i) the classification, re-classification, salary, or allowances of such public servant or class of public servants, or his or its office or offices; or
  - (ii) any decision involving the interpretation or application of the provisions of any Act or regulation governing the service of such public servant, or class of public servants;
- (b) to hear and determine appeals by the Minister of the department affected from the decisions of the Public Service Commissioner (whether acting alone or in conjunction with Assistant Commissioners) relating to the classification, reclassification, salary, or allowances of any public servant, or class of public servants, or his or its office or offices;
- (c) to hear and determine any application by a public servant for the redress or correction of any anomaly in treatment affecting him in respect of classification, salary, or position, with power to direct that any adjustment the Board may deem necessary shall, in the special circumstances of any particular case, have effect from the first day of July, one thousand nine hundred and nineteen;
- (d) to determine from time to time, on the application of the Civil Service Association of Western Australia or the State School Teachers' Union of Western Australia, whether any and what amounts shall be added to the salaries of all or any public servants, or of all or any public servants in any class, by way of temporary allowance, and to fix the period of time during which such allowance

shall continue, and to determine, on the application of the Public Service Commissioner, the Minister of Education, or the Minister of any department concerned, whether such temporary allowance shall cease or be reduced within such fixed period;

- (e) to hear and determine any appeal by the Civil Service Association on behalf of an officer appointed to a vacant position against a reclassification of such position made subsequently to the position being vacated;
- (f) to hear and determine any appeal by the Civil Service Association on behalf of any public servant from the Commissioner, under sections forty-seven and forty-nine of the Public Service Act, 1904\*;

20° Geo. V.,  
No. XXXVII.  
(No. 1 of  
1930), s. 4 (2)  
and (3).

20° Geo. V.,  
No. XXXVII.  
(No. 1 of  
1930), s. 4 (2)  
and (3).

and to adjust all such matters as aforesaid.

(1a) Notwithstanding anything to the contrary contained in subsection (1) of this section, where any appeal or application is made by or on behalf of any public servant or group of public servants who is or are—

No. 29 of 1935,  
s. 2 (b).  
No. 27 of 1937,  
s. 2.  
No. 7 of 1949,  
s. 3 (b).

- (a) a Government officer or a group of Government officers within the meaning and for the purposes of Part IXA. of the Industrial Arbitration Act, 1912-1935†; and
- (b) an officer or a group of officers appointed under the provisions of the Public Service Act, 1904-1935\*, or under the Forests Act, 1918-1931; and
- (c) occupying an office or offices in respect whereof the maximum rate of salary is fixed at less than seven hundred pounds a year,

and the appeal or application relates to a classification or reclassification made by the Public Service

\* See the Public Service Act, 1904-1948.

† See the Industrial Arbitration Act, 1912-1949.

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Commissioner (whether acting alone or in conjunction with Assistant Commissioners) or other authority authorised to make such classification or reclassification (as the case may be), the Board shall have jurisdiction to hear and determine such appeal or application in the following circumstances only, that is to say—

- (i) if the appeal or application is made against the placing by the Public Service Commissioner or other authority aforesaid of the office or offices occupied by the public servant or group of public servants by or on whose behalf the appeal or application has been made in one class instead of another class in the classification or reclassification aforesaid; and
- (ii) if the classes specified in such classification or reclassification have been defined by an award, or by any agreement deposited with the Registrar under and in accordance with the provisions of Part IXA. of the Industrial Arbitration Act, 1912-1935\*, which is still in force; and
- (iii) if the award or agreement mentioned in the next preceding paragraph contains a statement of the fundamental basis or principle upon which the said classes have been defined and upon which the placing in the classes defined as aforesaid of the offices to which the said classes relate shall be determined:

Provided that—

- (a) the jurisdiction of the Board under this subsection in relation to the said appeal or application shall be limited to—
  - (i) hearing and determining the question whether or not the office or offices held by the public servant or the group of public servants by whom or on whose behalf the appeal or application has been

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\* See the Industrial Arbitration Act, 1912-1949.



made, has or have, in accordance with the fundamental basis or principle aforesaid, been placed in its or their appropriate class of the classes defined as aforesaid; and

(ii) declaring the class in which such office or offices shall be placed; and

(b) where the classes aforesaid have been defined by an award or an agreement made or deposited under and in accordance with the provisions of Part IXA. of the Industrial Arbitration Act, 1912-1935\*, prior to the commencement of this subsection†, and such award or agreement applies to the public servant or group of public servants by whom or on whose behalf the appeal or application has been made and is still in force, but such award or agreement does not contain any statement of the fundamental basis or principle upon which the classes defined by such award or agreement are so defined, and upon which the placing in such classes of the offices held by the Government officers to which such classes relate shall be determined, this subsection shall be read in conjunction with section seven of the Industrial Arbitration Act Amendment Act (No. 2), 1937, and the provisions thereof shall apply so as to enable the Board to exercise its jurisdiction under this subsection in respect of the said appeal or application.

(2) Any person employed in the public service at a daily or weekly rate of wages, who is not a public servant within the meaning of section two of this Act, shall be paid in accordance with any award or industrial agreement under the Industrial Arbitra-

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\* See the Industrial Arbitration Act, 1912-1949.

† This subsection was enacted by Act No. 27 of 1937, which was assented to 18th January, 1938.

tion Act, 1912\*, applicable to workers of his class, whether such award or agreement is binding on the Crown or not.

No. 55 of 1923,  
s. 2.

If any question shall arise as to which of several awards or agreements is applicable, or as to whether any award is applicable or not, or as to what portion of any award or agreement is applicable to a particular person to whom this subsection applies, the Board shall determine such question.

No. 55 of 1923,  
s. 3.

The jurisdiction of the Board to deal with the beforementioned question shall be exercised whether such question shall have arisen before or after the coming into force of this Act†, provided that such question shall have arisen since the coming into force of the principal Act‡.

Subject as aforesaid, the Board shall have jurisdiction to fix the rate of wages of any person to whom this subsection relates who is not a member of an industrial union or covered by any award or agreement under the Industrial Arbitration Act, 1912\*.

(3) Any person who has been employed at a daily or weekly rate of wages for not less than five years continuously in a department of the public service within the Public Service Act, 1904§, and whose duties are similar to those of an officer on the permanent staff, or such as are proper for an officer on the permanent staff, to perform under such Act, may apply to the Public Service Commissioner for appointment to the permanent staff.

The Public Service Commissioner shall hear and determine such application, and state in writing his finding on the facts and decision, and an appeal shall lie to the Board from the finding of the Public Service Commissioner as regards all material facts and his decision thereon.

No. 21 of 1941,  
s. 2.

No. 42 of 1945,  
s. 2.

No. 39 of 1948,  
s. 3.

Provided that, in the computation of such period of five years as is mentioned in this subsection—

(a) any period of employment between the twenty-fifth day of November, 1941, and

\* See the Industrial Arbitration Act, 1912-1949.

† Act No. 55 of 1923, assented to 22nd December, 1923.

‡ Act No. 14 of 1920, assented to 3rd December, 1920.

§ See the Public Service Act, 1904-1948.

the thirtieth day of June, 1949, both dates inclusive, shall be excluded, provided that this shall not apply in the case of a person who was continuously employed for a period of not less than two years immediately prior to joining the forces during the war or wars in which the Commonwealth was engaged between the said second day of September, 1939, and the thirtieth day of June, 1949; and

- (b) in the case of a person who has been continuously employed during the whole of the period mentioned in paragraph (a) of this proviso, any period of continuous employment immediately prior to the said twenty-fifth day of November, 1941, shall be included.

(4) If any question shall arise, or at the commencement of this Act\* is pending, in any department of the public service as to the qualification of any person claiming a superannuation allowance under section one of the Superannuation Act, or the length of service of such person, or if any question shall arise, or at the commencement of this Act\* is pending under any other section of the said Act as to whether, or for what period, any person has served in an established capacity in the permanent civil service, it shall be referred to the Board, whose decision shall be final.

For the purposes of this subsection, the Railways Department shall be deemed to be a department of the public service, and the word "person" shall include any person employed in the said department, whether he be a salaried officer or paid by wages.

No. 19 of 1932.  
S. 4.

(5) For the purposes of this section, "classification" means a classification by the Public Service Commissioner or the Minister of Education, under the powers conferred by sections twelve and thirteen of this Act\*.

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\* Act No. 14 of 1920, assented to 3rd December, 1920.

Right of  
appeal.

7. (1) Any public servant, on behalf of himself or as representing any class of public servants, and any person to whom subsection (2) or subsection (3) of section six applies, or the Civil Service Association of Western Australia on behalf of any class or group of public servants or persons to whom subsection (3) of section six applies, or the State School Teachers' Union of Western Australia on behalf of employees on the teaching staff of the Education Department may, in the prescribed manner, appeal or apply to the Board upon any matter within its jurisdiction affecting him or the class of public servants represented by him, or the class or group of public servants, persons, or employees represented by such association or union.

(2) The Minister of any department affected may, in the prescribed manner, appeal to the Board from any decision of the Public Service Commissioner (whether acting alone or in conjunction with Assistant Commissioners) relating to the classification, re-classification, salary, or allowance of any public servant or class of public servants, or his or its office or offices.

No. 29 of 1945,  
s. 3.  
No. 27 of 1937,  
s. 3.

(3) This section shall be read with and subject to subsection (1a) of section six of this Act.

Sittings of  
Board and  
procedure.

8. (1) The Board shall sit at such time and place as the Chairman may appoint.

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Section four of the Public Service Appeal Board Act Amendment Act, 1937, is as follows:—

No. 27 of  
1937, s. 4.  
Provision as  
to appeals  
already made.

4. Notwithstanding any enactment or decision of the Public Service Appeal Board in force or given prior to the commencement of this Act to the contrary, but subject to subsection (1a) of section six of the principal Act<sup>1</sup> as amended by section two of this Act, the Public Service Appeal Board shall have jurisdiction to hear and determine appeals which prior to the commencement of this Act had been made to the said Board within the time and in the manner prescribed in relation to such appeals under section six of the principal Act by or on behalf of public servants or groups of public servants against the reclassifications made by the Public Service Commissioner under the provisions of the Public Service Act, 1904-1935, and published in the *Government Gazette* on the fourteenth day of June, the thirteenth day of August, the third day of September, and the third day of December, one thousand nine hundred and thirty-seven, respectively, to the same extent as if this Act had been in force and operation prior to the date when such appeals were made as aforesaid: Provided that such appeals had not been withdrawn or discontinued prior to the commencement of this Act.

<sup>1</sup> The Public Service Appeal Board Act, 1920-1935 (No. 14 of 1920), as reprinted in the Appendix to the Sessional Volume of the Statutes for the year 1930 and amended by the Acts Nos. 19 of 1932, and No. 29 of 1935.

(2) The Board may regulate its own procedure, and may conduct its inquiries without regard to legal forms, and shall direct itself by the best evidence it can procure, or that is laid before it.

(3) The Board may summon and examine witnesses on oath, and call for the production of papers and documents.

(4) The Minister of a department concerned, the Public Service Commissioner, and the Director of Education, may be represented before the Board, either jointly or separately, on the hearing of an appeal.

(5) Persons concerned in, or entitled to be represented on, an appeal or matter before the Board, may be represented by counsel or solicitor, or other agent.

9. With respect to the first classifications made by the Public Service Commissioner and the Minister of Education subsequent to the thirtieth day of June, one thousand nine hundred and twenty, the decisions of the Board relating to classification or salary shall have effect from the first day of July, one thousand nine hundred and twenty.

Retrospective effect of decisions.

10. The decision of the Board or of a majority of the members of the Board shall in each case be reported in writing by the Board to the Governor, and shall be final; and effect shall be given to every such decision.

Report of decisions.

11. The Board shall keep a record of its proceedings, which shall be open to public inspection and available for future reference.

Record of proceedings.

12. Notwithstanding any provision of the Public Service Act, 1904\* to the contrary, but subject to Part IXA. of the Industrial Arbitration Act, 1912-1935†, the classification of offices and officers under the Public Service Act, 1904\*, and the fixing of salaries of officers, inclusive of officers in the Administrative Division, shall be vested, and as from the

Classification under Public Service Act. No. 29 of 1935, s. 4.

\* See the Public Service Act, 1904-1948.

† See the Industrial Arbitration Act, 1912-1949.

thirtieth day of June, one thousand nine hundred and twenty, shall be deemed to have been vested, in the Public Service Commissioner, acting alone or in conjunction with Assistant Commissioners, subject to an appeal to the Board under this Act.

Classification  
of teachers.

13. The classification of the teaching staff of the Education Department, and the fixing of the salaries and other remuneration to be paid to teachers, shall be vested, and as from the thirtieth day of June, one thousand nine hundred and twenty, shall be deemed to have been vested in the Minister for Education, subject to appeal to the Board under this Act.

Public  
servants  
not to be  
prejudiced by  
recent  
cessation  
of work.

14. No public servant shall be prejudiced in respect of privileges, promotion, or continuity of service, by reason only of the recent simultaneous cessation of work on the part of certain public servants:

Provided that nothing in this section shall affect the provisions of section sixty of the Public Service Act, 1904\*.

Strikes  
prohibited.

15. If, after the commencement of this Act, any public servant takes part in or does any act, matter, or thing in the nature of a strike, he shall be guilty of an offence, and on conviction, shall forfeit the privileges which otherwise he might have enjoyed under any Act or regulation relating to his service, including the Superannuation Act, and be liable to a penalty not exceeding ten pounds.

Frivolous  
appeals.

16. The Board may, in its discretion, order an applicant or appellant to forfeit and pay to the Colonial Treasurer a sum not exceeding five pounds if, in the opinion of the Board, any application or appeal is frivolous or unreasonable.

Regulations.

17. The Governor may make regulations—

- (a) for the nomination of candidates, the conduct of elections of members of the Board, and the preparation of rolls of public servants entitled to vote;

\* See the Public Service Act, 1904-1948.

- (b) prescribing the time within which appeals and applications to the Board shall be made;
- (c) for enforcing the attendance of witnesses before the Board, and imposing a fine not exceeding ten pounds in case of non-attendance of any witness;
- (d) for the remuneration of members of the Board other than the Chairman; and
- (e) for all such other matters arising under and consistent with this Act not herein expressly provided for, and otherwise for fully and effectually carrying out and giving effect to this Act.

18. The Public Service Act, 1904\*, the Elementary Education Act, 1871, and its amendments, and the Superannuation Act, shall be construed and have effect, subject to this Act.

Effect of this Act on existing Acts.

19. Sections ten and nineteen of the Public Service Act, 1904, are hereby repealed, and sections fifty-one and fifty-two thereof (as amended by the Act No. 10 of 1912) are hereby further amended as follows:—

Repeal.

The proviso to subsection (1) of section fifty-one, and the words "and may either maintain, increase, or reduce the value of the office, as defined by the Commissioner in the proposal appealed from or change the office from one division to another," in subsection (1) of section fifty-two, and subsection (5) of section fifty-two, are omitted.

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\* See the Public Service Act, 1904-1948.