

Public Service Act, 1904-1963.

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Approved for reprint 1st May, 1964.

WESTERN AUSTRALIA

PUBLIC SERVICE

No. 41 of 1904.

(Affected by the Public Servants Act, 1915, the Public Service Appeal Board Act, 1920-1960, the Government Employees (Promotions Appeal Board) Act, 1945-1956 and the Stipendiary Magistrates Act, 1957.)

As amended by Acts Nos. :—

- 10 of 1912, assented to 9th January, 1912 ;
- 38 of 1912, assented to 5th November, 1912 ;
- 17 of 1919, assented to 28th October, 1919 ;
- 14 of 1920, assented to 3rd December, 1920 ;
- 22 of 1920, assented to 31st December, 1920 ;
- 26 of 1921, assented to 21st December, 1921 ;
- 27 of 1927, assented to 16th December, 1927 ;
- 2 of 1930,¹ assented to 6th January, 1930 ;
- 17 of 1930,² assented to 11th December, 1930 ;
- 28 of 1935,³ assented to 23rd December, 1935 ;
- 16 of 1947,⁴ assented to 1st November, 1947 ;
- 52 of 1947, assented to 19th December, 1947 ;
- 45 of 1948, assented to 7th January, 1949 ;
- 16 of 1950, assented to 17th November, 1950 ;
- 71 of 1953, assented to 9th January, 1954 ;
- 54 of 1954, assented to 23rd December, 1954 ;
- 53 of 1955, assented to 9th December, 1955 ;
- 69 of 1956, assented to 2nd January, 1957 ;
- 59 of 1963,⁵ assented to 11th December, 1963 ;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

(In this reprint the numbering of parts, sections, etc., as adopted in the 1948 reprint* is retained.)

AN ACT for the Regulation of the Public Service.

[Assented to 24th December, 1904.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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, 1904-1963.*

Short title and division.
No. 41 of 1904, s. 1 as amended by No. 59 of 1963, s. 1 (3).

¹ (20° Geo. V, No. XLIII.)

² Came into operation 1st December, 1931 (see *Gazette* 20/11/31).

³ Came into operation 1st February, 1936 (see *Gazette* 31/1/36).

⁴ Came into operation 5th March, 1948 (see *Gazette* 5/3/48 and footnote † to s. 56 of this reprint).

⁵ Came into operation 24th December, 1963 (see *Gazette* 24/12/63).

* i.e. the Public Service Act, 1904, as amended up to and including Act No. 52 of 1947 and reprinted in 1948, pursuant to the Amendments Incorporation Act, 1938.

It is divided into parts as follows :—

PART I—PRELIMINARY, ss. 1-6.

PART II—ADMINISTRATION, ss. 7-16.

PART III—DIVISIONS OF PUBLIC SERVICE, ss. 17-19.

PART IV—EXAMINATION AND APPOINTMENT OF OFFICERS, ss. 20-31.

PART V—INTERNAL ADMINISTRATION, ss. 32-45.

PART VI—MISCELLANEOUS, ss. 46-77.

No. 41 of 1904, s. 1, as amended by No. 2 of 1930, s. 17. (The numbering of ss. is as in 1948 reprint.)

Formerly Pt. VII, re-numbered VI in 1948 reprint.

Commencement. No. 41 of 1904, s. 2.

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

This Act to be read with and subject to Part IXA* of the Industrial Arbitration Act, 1912-1941. Inserted by No. 28 of 1935, s. 2, as s. 2A; incorporated and re-numbered as s. 3 in 1948 reprint.

3. (1) This Act shall be read with and subject to the provisions of Part IXA* of the Industrial Arbitration Act, 1912-1941§, 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 Part IXA* of the Industrial Arbitration Act, 1912-1941§, the last-mentioned provision 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 Part IXA* of the Industrial Arbitration Act, 1912-1941§, according to the tenor thereof contrary to the object and intention of the said Part IXA* shall have no effect.

(2) Save and except as provided in subsection (1) hereof, the provisions of this Act and the administration of such provisions according to the tenor thereof, shall continue as if the said Part IXA* of the Industrial Arbitration Act, 1912-1941§, had not been enacted.

Repeal. No. 41 of 1904, s. 3, re-numbered s. 4 in 1948 reprint. Schedule. Amended by No. 59 of 1963, s. 3.

4. The Acts mentioned in the first Schedule are hereby repealed.

*** Came into operation 17th April, 1905 (see *Gazette* 14th April, 1905).

* Re-numbered as Part X in the reprint of the Industrial Arbitration Act, 1912-1941, contained in Vol. 2 of the Reprinted Acts of the Parliament of W.A. (1943). The numbering of that reprint has been retained in the reprint of the Industrial Arbitration Act, as approved for reprint the 22nd January, 1964.

§ Now the Industrial Arbitration Act, 1912-1963.

5. In this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :—

Interpretation.
No. 41 of
1904, s. 4,
re-numbered
s. 5 in 1948
reprint.
Amended by
No. 50 of
1963, s. 4.

“ Commissioner ” means the Public Service Commissioner appointed under this Act.

“ Department ” means a branch of the Public Service established as a Department in accordance with the regulations.

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

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

“ Minister ” means the responsible 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 a position that has been created as a permanent position in a Department.

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

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

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

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

“Temporary employee” means a person temporarily employed under section thirty-one of this Act.

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

6. Unless otherwise expressly provided, this Act shall not apply to—

the Judges of the Supreme Court ; or

any officer of either House of Parliament under the separate control of the President or Speaker, or under their joint control ; or

the Agent General ; or

the Auditor General ; or

the Police Force ; or

the teaching staff of the Education Department ;
or

any officer or person appointed by the Commissioner for Railways under the Government Railways Act, 1904–1947*, or any Act amending the same ; or

any officer or class of officers to whom or to which, on the recommendation of and for special reasons assigned by the Commissioner, the Governor declares that the provisions of this Act shall not apply.

Non-application of Act to certain officers. No. 41 of 1904, s. 5, re-numbered s. 6 in 1948 reprint. See No. 14 of 1920, s. 2 (2).

* Now the Government Railways Act, 1904–1963.

PART II—ADMINISTRATION.

Public Service Commissioner.

7. (1) For the purposes of this Act the Governor may from time to time appoint some fit and proper person to be Public Service Commissioner, who shall have the powers and authority, and shall perform the duties and functions hereinafter vested in or imposed upon the Commissioner.

Appointment of Public Service Commissioner. No. 41 of 1904, s. 6, as amended by No. 22 of 1920, s. 2; No. 27 of 1927, s. 2; No. 28 of 1935, s. 3; No. 62 of 1947, s. 6 (3); and re-numbered s. 7 in 1948 reprint. Amended by No. 16 of 1950, s. 4 (3); No. 71 of 1953, s. 3 (3) No. 54 of 1954, s. 2; No. 53 of 1955, s. 2; No. 69 of 1956, s. 2.

(2) The Commissioner shall be appointed for a term of seven years, unless a vacancy in the office of Commissioner occurs on or after the coming into operation of the Public Service Act Amendment Act, 1954 and before the thirty-first day of December, one thousand nine hundred and fifty-seven, in which case the Commissioner shall be appointed for such term or terms not extending beyond the thirty-first day of December, one thousand nine hundred and fifty-seven, as the Governor thinks fit, and shall be eligible for re-appointment.

(3) In the case of the illness, absence, or suspension of the Commissioner, the Governor may appoint some other person to act as the deputy of such Commissioner during such illness, absence, or suspension; and such person shall, during the time for which he acts as such deputy, have all the powers and perform all the duties of such Commissioner.

(4) No action shall be brought or maintained against any person who is or shall have been Commissioner for any non-feasance or misfeasance in connection with his duties, nor shall any action lie nor any costs be payable in respect of any proceeding before the Commissioner:

Provided that this subsection shall not apply to any application or reference to or other proceeding before the Court of Arbitration under Part IXA† of the Industrial Arbitration Act, 1912–1941§, in which the Commissioner is or may be concerned as a party.

Proviso added by No. 28 of 1935, s. 3.

† Re-numbered as Part X in the reprint of the Industrial Arbitration Act, 1912–1941, contained in Vol. 2 of the Reprinted Acts of the Parliament of W.A. (1943). See also footnote * on page 2 of this reprint.

§ Now the Industrial Arbitration Act, 1912–1963.

Ord. No. 16 of
1950, s. 4 (3).

(5) The Commissioner shall receive a salary on and after the first day of January, one thousand nine hundred and fifty-four at such rate per annum, being not less than two thousand one hundred and fifty pounds and not more than such sum as the Governor is hereby authorised to determine, from time to time, whenever he thinks fit, and does determine, and unless otherwise so determined at a rate per annum of two thousand one hundred and fifty pounds. Such salary and adjustments are hereby charged on the Consolidated Revenue Fund, which, to the necessary extent, is hereby appropriated accordingly.

Subsec. (5a)
added by No.
71 of 1953,
s. 3 (3).

(5a) (a) In this subsection—

“ salary rate ” means the salary rate per annum of two thousand one hundred and fifty pounds or such other sum per annum as the Governor determines ;

“ variations ” means variations in the amount of the basic wage as determined from time to time on or after the first day of January, one thousand nine hundred and fifty-four under section one hundred and twenty-seven of the Industrial Arbitration Act, 1912.

(b) The Governor shall cause adjustments to be made to the salary rate by multiples of twenty pounds as and when the variations are to an extent of twenty pounds or a multiple of twenty pounds.

(6) No person shall be eligible for the office of Commissioner who is or has been at any time during the twelve months preceding the commencement of this Act a member of Parliament.

8. (1) The Commissioner may be suspended from his office by the Governor, but shall not be removed from office except as hereinafter provided.

(2) There shall be laid before both Houses of Parliament a full statement of the grounds of suspension 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.

Suspension
or removal
of Com-
missioner.
No. 41 of
1904, s. 7,
re-numbered
s. 3 in 1948
reprint.

(3) The Commissioner so suspended shall not be restored to office unless each House of Parliament, within forty-two days after the day when such statement is laid before it, severally declares by resolution that the said Commissioner ought to be restored to office.

(4) If each House of Parliament within the said time so declares, the said Commissioner shall be restored to office by the Governor accordingly, but otherwise, he may be removed from office.

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

9. The Commissioner shall be deemed to have vacated his office—

- (a) if he engages during his term of office in any paid employment outside the duties of his office ;
- (b) if he becomes bankrupt, or compounds with his creditors or makes any assignment of his salary for their benefit, or takes advantage of any provision of any Act relating to bankruptcy ;
- (c) if, except on leave granted by the Governor, he absents himself from duty for fourteen consecutive days, or for twenty-eight days in any twelve months, or becomes permanently incapable of performing his duties ; or
- (d) if he resigns his office by writing under his hand addressed to the Governor and such resignation is accepted by the Governor.

Offices, how vacated. No. 41 of 1904, s. 8, re-numbered s. 9 in 1948 reprint.

General Powers and Duties of Commissioner.

10. (1) As often as necessary to carry out the directions and provisions of this Act, and ensure the establishment and continuance of a proper standard of efficiency and economy in the Public Service, the Commissioner shall, as far as practicable, personally inspect each department, and investigate the character of the work performed by every officer therein, and the efficiency, economy, and general working of such

Commissioner to inspect departments, etc. No. 41 of 1904, s. 9, as amended by No. 2 of 1930, s. 2, and re-numbered s. 10 in 1948 reprint. Cf. N.E.W., 1902, No. 31, s. 9.

department, both separately and in its relation to other departments, and may, for such purpose, examine the permanent head of such department and such other witnesses as may appear to the Commissioner to be necessary.

Commissioner to propose changes of officers or re-arrangement of work.

(2) The Commissioner may propose to the Governor any particular disposition of officers and offices and the division, class, or grade of every officer, and re-arrangement or improved method of carrying out any work which appears to the Commissioner necessary or expedient for the more economic, efficient, or convenient working of any department, and such proposal shall be considered and dealt with by the Governor.

(3) If the Governor does not approve of any proposal, it shall be the duty of the Commissioner to reconsider such proposal, and within a time to be specified by the Governor to submit another proposal. Such fresh proposal shall be considered and dealt with by the Governor.

(4) Where the Governor does not approve of any proposal, a statement of the reasons for not approving and for requiring a fresh proposal shall be laid before the Parliament.

Alteration of staff of any department. Formerly (6) re-numbered (5) in 1930 reprint*, former (5) having been repealed by No. 2 of 1930, s. 2.

(5) If the Commissioner finds that more officers are employed in a department than may be determined to be necessary for the efficient working of such department, such officers as are in excess may be transferred by the Governor, on the recommendation of the Commissioner, to some other department; and no appointment or promotion of an officer shall be made in such first-mentioned department until by transfer, retirement, dismissal, or death, the number of officers is reduced below the number determined to be necessary for the efficient working of such department.

Excess officers. Formerly (7) re-numbered (6) in 1930 reprint*.

(6) If the services of any officers in excess in any department are not likely to be required in any other department, the Governor, on the recommendation of the Commissioner, may call upon such officers to retire

* See Appendix to Sessional Volume of Statutes for the year 1930.

from the Public Service ; and every such officer so called upon to retire shall retire accordingly. A record shall be kept of all officers who retire under this subsection, and in the event of the re-appointment of any such officer to the Public Service the provisions of section twenty-nine shall not apply.

(7) The Commissioner shall make such specific or general reports as the Governor may from time to time require.

Formerly (8)
re-numbered
(7) in 1930
reprint*.

11. (1) The Commissioner 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 Commissioner may examine such person upon oath touching any matter to be inquired into.

Power to
summon
witnesses and
take evidence
on oath.
No. 41 of
1904, s. 11.

(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 Commissioner or to produce all books, documents, or writings pursuant to such summons, he shall be liable to pay a penalty not exceeding twenty pounds, to be recovered by any authorised officer in any court of competent jurisdiction : Provided that no person shall be compelled to answer any question which would tend to incriminate him.

12. For the purpose of conducting an inquiry or investigation under the authority of this Act outside of Perth, at which it may be inconvenient for the Commissioner to be present, the Commissioner may, with the approval of the Governor, delegate any of his powers or functions to any fit person or persons ; but the report or decision upon any such inquiry or investigation shall be made by the Commissioner.

For purpose
of inquiry,
Commissioner
may delegate
powers.
Ibid., s. 12.
Of, N.S.W.
1902,
No. 31, s. 11.

* See Appendix to Sessional Volume of Statutes for the year 1930.

Record of officers to be kept and gazetted.

No. 41 of 1904, s. 13, as amended by No. 2 of 1930, s. 3.

13. (1) The Commissioner shall keep a record of all officers, showing, with regard to each officer, his age and length of service, the office he holds, and his classification.

(2) The Commissioner shall, in the month of August or as soon thereafter as practicable in each year, forward to the Governor, and publish in the *Government Gazette*, a list of all officers on the first day of July in such year, together with the particulars so recorded in respect to them, and showing the date of appointment of such officers. Such list shall be *prima facie* evidence of the information contained therein; a copy of such list shall be laid before Parliament within fourteen days of publication, or, if Parliament is not sitting, then within fourteen days after the commencement of the next sitting thereof.

Commissioner to report on state of Public Service to Governor.

No. 41 of 1904, s. 14.

14. The Commissioner 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, and of the proceedings of the Commissioner; and in such report there shall be set forth any changes and measures necessary for improving the method of the working of the Public Service, and especially for insuring efficiency and economy therein and in each department thereof. The Commissioner shall, in such report, draw attention to any breaches or evasions of this Act which may have come under notice.

Assistant Commissioners.

Ibid., s. 15, as amended by No. 2 of 1930, s. 4, and No. 23 of 1935, s. 4.

15. The Governor may appoint, temporarily, an Assistant Public Service Commissioner, or two assistant Public Service Commissioners, who shall act in conjunction with the Commissioner in the classification of officers, and in the exercise of such other powers and duties of the Commissioner as the Governor may, from time to time, on the recommendation of the Commissioner, direct.

Subject to any award or agreement made and in force under Part IXA* of the Industrial Arbitration Act, 1912-1941§, there shall be a reclassification once at least in every five years.

* Re-numbered as Part X in the reprint of the Industrial Arbitration Act, 1912-1941. See also footnote * on page 2 of this reprint.

§ Now the Industrial Arbitration Act, 1912-1963.

16. No member of Parliament shall interview or communicate with the Commissioner regarding the appointment of any applicant for a position in the Public Service.

Commissioner not to be interviewed. No. 41 of 1904, s. 16.

PART III—DIVISIONS OF PUBLIC SERVICE.

17. The Public Service shall consist of four Divisions, that is to say :—

Divisions of Service. *Ibid.*, s. 17.

The Administrative Division,
The Professional Division,
The Clerical Division, and
The General Division.

18. (1) The Administrative Division shall include all Permanent Heads of Department, and all persons whose offices are, on classification, included in such division, and also all persons whose offices the Governor, on the recommendation of the Commissioner, directs to be included in such Division.

Administrative Division. *Ibid.*, s. 18, as amended by No. 2 of 1930, s. 5.

(2) The Professional Division shall include all officers whose duties require in the person performing them some special skill or technical knowledge usually acquired only in some profession or occupation different from the ordinary routine of the Public Service, and whose offices the Commissioner includes in such Division.

Professional Division.

(3) The Clerical Division shall include all officers whose offices on classification are included in such Division.

Clerical Division.

(4) The General Division shall include all persons in the Public Service not included in the Administrative, or Professional or Clerical Division.

General Division.

19. Notwithstanding anything contained in this Act, the Governor may, on the recommendation of the Commissioner, fix by order the rate of salary to be paid to an officer occupying any particular office at any sum within the limits of his class or grade, and such sum shall be the salary attached to such officer while he holds such office, until the Commissioner otherwise recommends.

Power to fix salary. No. 41 of 1904, s. 22, re-numbered s. 19 in 1948 reprint. See No. 14 of 1920, s. 12.

PART IV—EXAMINATION AND APPOINTMENT
OF OFFICERS.

Commissioner to provide by regulation for examinations.

No. 41 of 1904, s. 23, as amended by No. 2 of 1930, s. 7, and re-numbered s. 20 in 1948 reprint.

Cf. N.S.W. 1902, No. 31, s. 27.

20. (1) The Commissioner may make regulations for the examination of persons desirous of admission into the Public Service, which shall prescribe—

- (a) a preliminary medical examination as to the health of the candidates ;
- (b) the character and standard of the examinations or tests as to the acquirements and efficiency to which candidates are required to have passed or to submit themselves ;
- (c) the times and places where the examinations shall be held, and the manner of holding the same ;
- (d) a maximum and minimum age of candidates.

(2) For the purposes of this section the Commissioner may appoint as many fit persons as may from time to time be required to be examiners to conduct examinations in the prescribed manner.

Qualification for appointment to Public Service.

No. 41 of 1904, s. 24, re-numbered s. 21 in 1948 reprint.

Cf. N.S.W. 1902, No. 31, s. 28.

Repealed and re-enacted by No. 59 of 1963, s. 5.

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

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

- (e) he has complied with the requirements of the regulations relating to superannuation or life assurance or been exempted from so doing ; and
- (f) he has given satisfactory service during probation.

22. (1) Separate examinations shall be held in connection with the Professional, Clerical, and General Divisions respectively, and shall be designed to test the efficiency and aptitude of candidates for employment in such several Divisions ; but the educational examination for the General Division shall be of an elementary or rudimentary character.

Separate examinations to be held for the different divisions. No. 41 of 1904, s. 25, re-numbered s. 22 in 1948 reprint.

(2) The Commissioner shall arrange the times and places of entrance examinations.

(3) Candidates who have passed the examinations in connection with the Professional Division shall be deemed to have passed the examinations for the Clerical and General Divisions respectively ; and candidates who have passed the examinations in connection with the Clerical Division shall be deemed to have passed the examinations for the General Division.

23. (1) Except as hereinafter provided, every person admitted to the Public Service shall in the first instance be appointed on probation only, and may be continued in such probationary position for a period of six months, but may be dispensed with at any time during such period.

Admissions to Public Service to be on probation only. Ibid., s. 28, re-numbered s. 23 in 1948 reprint. Amended by No. 59 of 1963, s. 6.

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

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

(4) Where an appointment on probation is made by the Governor, the Governor, on expiry of the period of probation, may, on the recommendation of the

Commissioner, confirm or annul that appointment, or extend the period of probation for a further period not exceeding six months, but so that in any event the total period of probation shall not exceed twelve months.

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

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

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

24. If at any time in any special case it appears expedient or desirable in the interests of the Public Service to appoint to any Division some person who is not in the Public Service, or who, being in the Public Service, holds an office exempted from the provisions of this Act, the Governor may, on the recommendation of the Commissioner, appoint such person accordingly, without either examination or probation, and also, if he thinks fit, without requiring that person to make financial provision for retirement from the Public Service in accordance with this Act.

25. No person shall be appointed to the office of magistrate unless—

- (a) he has passed the prescribed examination in law ; or
- (b) he is a legal practitioner duly qualified under the Legal Practitioners Act, 1893-1946† ; or
- (c) he has, prior to the commencement of the Public Service Act Amendment Act, 1929‡, served with diligence and fidelity in the office of clerk of courts or mining registrar, followed by at least four years' continuous service as an acting magistrate.

Qualification and appointment of magistrates.^a
Ibid., s. 30, as amended by No. 2 of 1930, s. 9, and No. 17 of 1930, s. 10 (8), re-numbered s. 25 in 1948 reprint.
Of. N.S.W., 1902, s. 37.
[See also No. 17 of 1930, ss. 9-12.]

Provided that, on the certificate of the Commissioner that it is desirable for the economy of the Public Service so to do, the Governor may appoint a District Medical Officer or may temporarily appoint any other officer a magistrate without examination.

26. The Governor may make regulations prescribing the subjects for and the nature and standard of the examination to be undergone by persons who desire to be appointed magistrates.

Examination for magistrates.
No. 41 of 1904, s. 31, re-numbered s. 23 in 1948 reprint.
Of. N.S.W., 1902, No. 31, s. 33.

27. (1) Subject to the provisions of section twenty-four, no appointment of any person not already in the Public Service to any permanent office or position therein shall be made except—

Conditions of new appointments.
No. 41 of 1904, s. 32, re-numbered s. 27 in 1948 reprint.
Of. N.S.W., 1902, No. 31, s. 34.

- (a) at the instance of the Commissioner ; or
- (b) upon the written request of the permanent head of a department to the Commissioner.

(2) No such appointment shall in any case be made except upon a certificate from the Commissioner that such an appointment is necessary.

* See Stipendiary Magistrates Act, 1937.

† Now the Legal Practitioners Act, 1893-1963. ‡ 6th January, 1930.

Certificate of Commissioner preliminary to appointment.
No. 41 of 1904, s. 33, re-numbered s. 28 in 1948 reprint.
Cf. N.S.W. 1902, No. 31, s. 35.
Amended by No. 59 of 1968, s. 8.

28. (1) The Commissioner, in giving the certificate in the last section mentioned, shall, in addition, state therein—

- (a) the name of the person proposed to be appointed ;
- (b) that the person named in the certificate has passed the prescribed examination ; or
- (c) having regard to the nature of the appointment that examination is not required, or may be dispensed with under the provisions of this Act.

(2) The Governor or the Commissioner, as the case requires may thereupon appoint the person named in such certificate, subject to the provisions of section twenty-three.

Age of new appointees to Clerical Division.
No. 41 of 1904, s. 34, as amended by No. 38 of 1912, s. 2, and No. 2 of 1930, s. 10, re-numbered s. 29 in 1948 reprint.

29. (1) No person shall be appointed to the Clerical Division whose age at his last birthday previous to appointment was less than fifteen years or more than twenty-five years, unless such person is at the time of appointment already in the Public Service. In cases of special duties the Governor may, however, on the recommendation of the Commissioner, extend the age from twenty-five to thirty-five years.

Age of new appointees to General Division.

(2) No person shall be appointed to the General Division whose age at his last birthday previous to appointment was less than fourteen years or (except as hereinafter provided) more than fifty years, unless such person is at the time of his appointment already in the Public Service. In cases of special duties the Governor may, however, on the recommendation of the Commissioner, extend the age from fifty to fifty-five years. But, subject to the Acts relating to public elementary education, nothing in this subsection shall be taken to prevent the employment of boys above the age of thirteen years to be message boys or junior messengers.

Power to extend limit of age for special cases.

(3) For the purposes of this section, persons temporarily employed shall be deemed to be already in the public service.

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

Re-appointment of retired officers. No. 41 of 1904, s. 36, as amended by No. 2 of 1930, s. 11, re-numbered s. 30 in 1948 reprint. Amended by No. 59 of 1963, s. 9.

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

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

(2) In the case of any person who shall have received a sum of money as compensation or gratuity on such retirement, no appointment shall be made until he has, if so required by the Governor, paid into the Treasury an amount equal to such compensation or gratuity in one sum, or arranged to pay by instalments. Such sum shall be refunded upon the person so appointed retiring from the Public Service.

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

Temporary employment. No. 41 of 1904, s. 36, as amended by No. 10 of 1912, s. 5, and re-numbered s. 31 in 1948 reprint. [See No. 14 of 1920, s. 2 (1).] Repealed and re-enacted by No. 59 of 1963, s. 10.

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

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

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

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

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

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

- (a) any wilful disobedience or disregard of a lawful order made or given by a person legally entitled to make or give the order ;
- (b) neglect or want of care in the discharge of his duties as a temporary employee ;
- (c) inefficiency or incompetency in the discharge of such duties which inefficiency or incompetency arises from causes within his control ;
- (d) taking intoxicating liquor or drugs to excess ;
- (e) any disgraceful conduct ; or
- (f) any improper conduct,

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

"This Act" includes regulations. See s. 4, Act No. 80 of 1918.

PART V—INTERNAL ADMINISTRATION.

Alterations of Staff.

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

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

where the maximum salary for the office referred to in paragraph (a) of this subsection, or for the office to be occupied by the officer referred to in paragraph (b) of this subsection who it is proposed to transfer or promote, exceeds the justiciable salary, but if that maximum salary is not so in excess, the power conferred on the Governor by this section is exercisable by the Commissioner.

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

33. (1) Increments of salary within the limits of a range shall be annual ; but no increment shall accrue to any salary until the officer in receipt thereof has received such salary for a period of twelve months :

Provided that the right to receive an increment in any year shall depend upon the good conduct, diligence, and efficiency of the officer.

(2) The permanent head of each department shall furnish to the Commissioner a report upon the conduct, diligence, and general efficiency of the officers of his department before any increase of salary is paid to such officers.

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

No. 41 of 1904, s. 37, as amended by No. 2 of 1980, s. 12, re-numbered s. 32 in 1948 reprint.

Repealed and re-enacted by No. 69 of 1963, s. 11.

Increments of salary.

No. 41 of 1904, s. 37A inserted by No. 2 of 1980, s. 18, renumbered s. 33 in 1948 reprint.

Report

Such report shall, in the first instance, be made by the immediate superior of the officer reported upon, and then forwarded by the permanent head, with such amendments as he may think fit.

How vacancies to be filled by promotions.

No. 41 of 1904, s. 38, re-numbered s. 34 in 1948 reprint.

Amended by No. 59 of 1963, s. 12.

34. (1) Whenever a vacancy occurs in any office, and it is expedient to fill such vacancy by the promotion of an officer, the Governor or the Commissioner, as the case requires, may, subject to the provisions of this Act—

appoint to fill such vacancy an officer of the Department in which such vacancy occurs, regard being had to the relative efficiency, or, in the event of an equality of efficiency of two or more officers, to the relative seniority of the officers of such department; or

appoint to fill such vacancy any qualified officer from any other Department whom, on the ground of efficiency, or in the event of an equality of efficiency of two or more officers whom, on the ground of seniority, it appears desirable so to appoint, if it appears that such appointment would result in the work of such office being more efficiently performed than by selecting an officer from the Department in which such vacancy occurs.

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

(3) When the Governor does not approve of such a recommendation of the Commissioner, a statement of the reasons for not approving the recommendation and for requiring a further recommendation shall, within seven days after the date the Governor fails to so approve, be laid before Parliament, and if Parliament is not then sitting, then within the first seven days of the next following sitting of Parliament.

(4) "Efficiency" in this section means special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit and good and diligent conduct.

35. All promotions in and appointments to the Administrative Division shall, as far as practicable, and subject to the provisions of this Act, be from such Administrative Division, or from the highest class of the Professional or Clerical Division, and shall be made with regard to special qualifications and aptitude, as well as to seniority in grade or duration of service, seniority being subordinated to considerations of special fitness.

Order of promotions, etc.
Ibid., s. 39, re-numbered s. 35 in 1948 reprint.
Cf. N.S.W. 1902, No. 31, s. 47.

36. Notwithstanding anything in this Act contained, the Commissioner shall have the power to direct the holding of examinations in connection with the filling of certain offices or any of them in order to test the efficiency and aptitude of the candidates for and the officers available for appointment to the position in respect of which the Commissioner has directed an examination to be held, and the provisions of section twenty shall, *mutatis mutandis*, apply to any examination under the provisions of this section.

Examination in special cases.
No. 41 of 1904, s. 42, re-numbered s. 36 in 1948 reprint.

37. The Governor may, on the recommendation of the Commissioner, transfer any officer in the Clerical Division who has been found incapable of performing his duties to the General Division, and may transfer any officer in the Professional Division who has been found incapable of performing his duties to the Clerical Division or General Division.

Transfer from Professional or Clerical to General Division.
Ibid., s. 43, re-numbered s. 37 in 1948 reprint.

38. [*Repealed by No. 59 of 1963, s. 13.*]

39. The Governor or the Commissioner, as the case requires, may, in any case, allow any officer to decline any offered promotion or appointment, without prejudice to his right to any future promotion or appointment to which his grade and order of seniority and merit would, under the provisions of this Act, entitle him: But no officer shall be allowed to refuse compliance with any order of the Governor directing his removal from one position to another, or from one

Governor may allow officer to decline promotion.
Ibid., s. 45, re-numbered s. 39 in 1948 reprint.
N.S.W. 1902, No. 30, s. 57.
Amended by No. 59 of 1963, s. 14.

division or department to another ; and disregard of, or disobedience to, any such order shall be followed by dismissal, unless the officer concerned justifies such refusal, in the judgment of the Commissioner, by adducing some valid and sufficient reason therefor.

Minister or Permanent Head may propose changes of officers or re-arrangement of work.
No. 41 of 1904, s. 46, re-numbered s. 40 in 1948 reprint.
N.S.W. 1902, No. 31, s. 52.

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

Provided that nothing in this Act contained shall be construed as restricting the ordinary and necessary departmental authority of such Minister or Permanent Head of any department with respect to the direction and control of officers and work.

41. [*Repealed by No. 59 of 1963, s. 15.*]

Dismissals, Removals, etc.

Offences,
No. 41 of 1904, s. 47, re-numbered s. 42 in 1948 reprint.

42. (1) If any officer is guilty of a breach of the provisions of this Act or any regulations thereunder, or is guilty—

- of any wilful disobedience or disregard of any lawful order made or given by any person having authority to give such order ; or
- of being negligent or careless in the discharge of his duties ; or
- of being inefficient or incompetent, and such inefficiency or incompetency appears to arise from causes within his own control ; or
- of using intoxicating beverages to excess ; or
- of any disgraceful or improper conduct ;

then such officer shall be guilty of an offence, and shall be liable to such punishment as may be determined upon under the provisions of this section.

(2) Any officer (not being an officer included in the Administrative Division) charged with the commission of an offence—

(a) may, in the case of minor offences against discipline, be reprimanded or cautioned by the Permanent Head or by any officer prescribed as having power to suspend officers in the office or place in which the offending officer is employed ; or

Summary reprimand for minor offences.

(b) for any such offence whatever may be temporarily suspended by the Permanent Head, or, in emergent cases, by any officer prescribed as having power to suspend officers in the office or place in which the offending officer is employed, in which event such suspension shall be immediately reported to the Permanent Head. The suspending officer or Permanent Head shall forthwith furnish the offending officer with a copy of the charge on which he is suspended, and require him to forthwith state, in writing, whether he admits or denies the truth of such charge, and to give any explanation in writing as to such offence for the consideration of the Permanent Head.

Temporary suspension of officer charged.

(3) On consideration of such explanation, if any, the Permanent Head, if of opinion that the alleged offence has not been committed, may remove such suspension, or if of opinion that the alleged offence has been committed by such officer, but is not of so serious a nature that an investigation thereof should be made by the Commissioner, may reprimand or caution such officer, and remove the suspension, or, in his discretion, fine him any sum not exceeding ten pounds, and in any case shall determine whether such officer shall be paid his salary or any part thereof for the period of his suspension.

Power of Permanent Head to reprimand.

(4) If the Permanent Head considers the alleged offence to be of so serious a nature that an investigation thereof should be made by the Commissioner, he may further suspend such officer and forthwith refer the charge to the Commissioner for investigation and report ; and if such suspended officer does not, in writing, admit the truth of the charges made against

Or refer charge to Commissioner.

him, within four days, or such further time as the Commissioner may allow, the Commissioner shall inquire as to the truth of such charges.

Punishment
when charge
proved.

(5) If any such charges are admitted or are found by the Commissioner to be proved, then the Commissioner may, subject to the regulations, impose a penalty upon such offending officer, or may deprive him of his leave of absence during a specified period, or the Governor may, according to the nature of the offence, reduce such officer to a lower class or grade and salary or wages, or may dismiss such officer from the Public Service, or require him to resign, and in the event of being so dismissed such officer shall, unless otherwise ordered by the Governor, be entitled to no salary or wages during the time of his suspension.

Removal of
suspension.

(6) If none of such charges are found by the Commissioner to be proved, the suspension shall be immediately removed, and the officer shall receive arrears of salary in full from the date of his suspension.

Appeal to
Commissioner.
Ibid., s. 48,
re-numbered
s. 43 in 1948
reprint.

43. Any officer fined by the Permanent Head under the provisions of subsection three of the last preceding section may appeal in the prescribed manner to the Commissioner, who may confirm, reverse, or vary the decision of the Permanent Head.

Offences by
officers in
Administrative
Division.
Ibid., s. 49,
re-numbered
s. 44 in 1948
reprint.

44. (1) Where an officer in the Administrative Division is charged by any person with any of the offences mentioned in subsection one of section forty-two, the Minister may suspend such officer, and report the charge and suspension to the Commissioner; and if such officer does not, in writing, admit the truth of the charges made against him, the Commissioner shall inquire into the truth of such charges, and, after fully hearing the case, shall report to the Governor his opinion thereon.

(2) If any such charges are admitted or are found by the Commissioner to be proved, then the Commissioner may make such recommendation in reference thereto, and as to the punishment or otherwise of the person charged, as to the Commissioner seems

fit. On receiving such recommendation, the Governor may dismiss such officer from the Public Service, or reduce such officer to a lower division and salary, or impose such penalty or other punishment as the case demands.

(3) If such charges are found by the Commissioner not to be proved, the suspension shall be immediately removed, and the officer shall receive arrears of salary in full from the date of his suspension.

45. Any officer may appeal from the recommendation of the Commissioner under sections forty-two or forty-four to the Public Service Appeal Board constituted under the Public Service Appeal Board Act, 1920-1945*, and such Board shall have jurisdiction to hear and determine the appeal under and subject to the provisions of that Act,

Appeal to Public Service Appeal Board. No. 41 of 1904, s. 50 repealed and new s. 50 substituted by No. 2 of 1930, s. 16, and re-numbered s. 45 in 1948 reprint.

[Former Part VI, which contained former ss. 51 and 52, repealed by No. 2 of 1930, s. 17.]

PART VI—MISCELLANEOUS.

46. 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 Majesty's service (other than a Minister or judicial officer) in his capacity as such 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.

Formerly Part VII, re-numbered VI in 1948 reprint.

Performance of duties and powers of officer in his absence. No. 41 of 1904, s. 53, re-numbered s. 46 in 1948 reprint.

47. [*Repealed by No. 59 of 1963, s. 16.*]

* Now Public Service Appeal Board Act, 1920-1960.

Rent charged to officers residing in Government buildings. *Ibid.*, s. 55, re-numbered s. 48 in 1948 reprint.

48. If an officer occupies, for the purpose of residence, the whole or part of a building belonging to or occupied by the State Government, the Governor may direct that a fair and reasonable sum as rent therefor be deducted from such officer's salary, and the amount of such sum, not exceeding ten per centum on the salary of such officer, shall be fixed by the Governor on the recommendation of the Commissioner or by officers specially or generally appointed for the purpose by the Governor. In calculating for any purpose the rate of salary of such officer, the amount so deducted as rent shall be deemed and taken to be part of his salary :

But no officer shall be subject to any deduction from his salary as rent of any premises he may continue to occupy, if at the commencement of this Act such premises were occupied by him free of rent.

Services of incapable officer may be dispensed with. *Ibid.*, s. 56, re-numbered s. 49 in 1948 reprint.

49. If an officer appears to the Commissioner, after a report from the Permanent Head, to be unfit to discharge or incapable of discharging the duties of his office efficiently the Commissioner shall inquire and determine whether it is proved that such officer is unfit to discharge or incapable of discharging the duties of his office, and the Governor, on the recommendation of the Commissioner, may deal with such officer either by calling upon such officer to retire from the Public Service or by transferring him to some other position ; and every such officer, if called upon to retire, shall retire accordingly.

Forfeiture of office in certain cases. *Ibid.*, s. 57, re-numbered s. 50 in 1948 reprint.

50. (1) If an officer is, on an indictment, convicted of any offence, he shall be deemed to have forfeited his office, and shall thereupon cease to perform his duties or receive his salary.

Services dispensed with for fraudulent bankruptcy. *N.S.W.*, 1902, No. 31, s. 61 (2).

(2) If the estate of an officer is sequestrated, either voluntarily or compulsorily, for the benefit of his creditors, such officer shall apply, as soon as he may legally do so, to a court of insolvency for a certificate of discharge. If it appears to such court that the applicant has been guilty of fraud, dishonourable conduct, or extravagance, such court shall direct the clerk of the court thereupon to report the same to the

Minister or Permanent Head or chief officer of the department in which such officer is employed. If such officer does not apply as aforesaid for such certificate of discharge, or if he applies, and it appears from the report that such officer has been guilty of fraud, dishonourable conduct, or extravagance, such officer may be dismissed from the Public Service, or reduced to a lower division, class, or grade therein, or fined, reprimanded, or otherwise punished by order of the Governor.

51. On receiving notice of any pecuniary penalty imposed upon or of any order for the payment of costs made against any officer under the authority of this Act, the officer who pays the salary of the officer so punished, or against whom any such order is made, shall deduct the amount thereof from such salary.

Fines to be stopped from salary.
No. 41 of 1904, s. 58, re-numbered s. 51 in 1943 reprint.

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

Annual leave for recreation.
Ibid., s. 59, re-numbered s. 52 in 1943 reprint.
See 64 Vict., No. 21, s. 23.
Repealed and re-enacted by No. 59 of 1963, s. 17.

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

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

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

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

Deduction of pay for unauthorised absence.

No. 41 of 1904, s. 60, re-numbered s. 53 in 1948 reprint.

(See No. 14 of 1920, s. 14.)

Amended by No. 59 of 1963, s. 18.

53. When the absence of an officer is not sanctioned under the provisions of this Act, there shall be deducted from his salary his pay for each day or portion of a day of such absence.

Leave of absence on account of illness or necessity.

No. 41 of 1904, s. 61, re-numbered s. 54 in 1948 reprint.

Repealed and re-enacted by No. 59 of 1963, s. 19.

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

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

Leave of absence without pay.

Ibid., s. 62, re-numbered s. 55 in 1948 reprint.

Repealed and re-enacted by No. 59 of 1963, s. 20.

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

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

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

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

Long service leave.

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

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

cf. s. 31 (6).

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

No. 41 of 1904, s. 63 as inserted by No. 16 of 1947, s. 2 ;* re-numbered as s. 56 in 1948 reprint.

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

Amended by No. 69 of 1956, s. 3.

Repealed and re-enacted by No. 59 of 1968, s. 21.

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

(a) the date on which he would have become entitled to long service leave had he remained employed in the State Service ; or

* No. 16 of 1947, s. 3 provides as follows :—

Retrospective Operation of Act.

" 8. This Act shall operate and have effect retrospectively to the thirty-first day of January, 1942, and shall apply to all permanent and temporary officers who were on that date, or who subsequently became or become employed under the principal Act : Provided that nothing in this Act shall prejudice or affect the operation of section sixteen of the Interpretation Act, 1918-1928."

- (b) the date determined in accordance with this section,

whichever date is the earlier.

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

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

- (a) an officer, with the approval of the Commissioner and subject to paragraph (b) of this subsection, may accumulate his entitlement to long service leave up to a maximum of nine months ;
- (b) in the case of an officer who at the date of the coming into operation of the Public Service Act Amendment Act, 1947,† had accumulated or within five years of that date had accumulated at least six months of long service leave, the Commissioner may approve the accumulation of his entitlement to long service leave, including the long service leave already accumulated, up to a maximum of twelve months ; and
- (c) if an officer reduces his maximum long service leave entitlement approved under this subsection, by taking not less than three months of long service leave, the officer may again qualify for long service leave up to that maximum long service leave entitlement.

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

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

† 5th March, 1958. See proclamation *Government Gazette* 5/3/48.

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

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

Regulations relating to long service leave entitlement.

- (a) providing for lump sum payments instead of long service leave entitlements ;
- (b) providing for lump sum payments for *pro rata* long service leave entitlements—
- (i) to officers who retire after attaining the age of sixty years or through ill-health ;
 - (ii) to female officers who resign from the Public Service because of, or with a view to marriage ;
 - (iii) to other officers ;
 - (iv) in the case of death of an officer, to his estate, unless he is survived by a widow legally dependent on him, or other person legally so dependent who is approved by the Treasurer for the purpose ; and
 - (v) in relation to each class of officer to prescribe the minimum qualifying continuous service,

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

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

- (a) any period exceeding two weeks during which the officer is absent on leave without pay ; unless the Governor has made a determination under subsection (3) of section fifty-five of this Act ;

- (b) any period during which the officer is taking his long service leave entitlement or any portion thereof ;
- (c) any service of the officer prior to his attaining the age of eighteen years ;
- (d) any service of an officer who resigns, except a female officer who resigns because of or with a view to marriage, or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which he is dismissed from the Public Service, when that prior service has actually entitled the person to long service leave under this section ;
- (e) any period of service between the date on which an officer's approved accumulated entitlement to long service leave became due and the date he reduces that entitlement by taking not less than three months long service leave.

Holidays.
No. 41 of
1904, s. 64,
as amended
by No. 17 of
1919, s. 3,
No. 26 of
1921, s. 2,
and No. 45
of 1948,
s. 3, and
re-numbered
s. 57 in 1948
reprint.
(Cf. 64 Vict.
No. 21, s. 30 ;
2 Edw. VII,
No. 16, s. 6.)

57. The following days shall be Public Service holidays throughout the service :—

- (a) New Year's Day.
Good Friday.
Easter Eve.
Easter Monday.
Christmas Day.
The 26th day of December.
The 25th day of April (Anzac Day).
- (b) The anniversary of the Birthday of the Sovereign.
Foundation Day (1st day of June).
Labour Day (1st day of March).
- (c) Also all days which the Governor may appoint, and which shall be notified in the *Government Gazette* as Public Service holidays.

Whenever any of the days mentioned in subsection (b) fall on a day other than a Monday, the next following Monday shall be the holiday instead of such day.

58. [*Repealed by No. 59 of 1963, s. 22.*]

59. Every officer having attained the age of sixty years shall be entitled to retire from the Public Service if he desires so to do ; but any such officer may (unless called upon to retire as hereinafter provided) continue in the Public Service until he attains the age of sixty-five years. If any such officer continues in the Public Service after he has attained the age of sixty years, he may at any time before he attains the age of sixty-five years be called upon by the Governor, on the recommendation of the Commissioner, to retire from the Public Service ; and every such officer so called upon to retire shall retire accordingly.

Officers between sixty and sixty-five years of age entitled or may be called upon to retire. No. 41 of 1904, s. 66, re-numbered s. 59 in 1948 reprint.

60. Every officer shall retire on attaining the age of sixty-five years, unless he is required to continue to perform his duty in the Public Service as hereinafter provided, and is able and willing so to do.

Officers attaining age of sixty-five to retire unless required to continue. Ibid., s. 67, re-numbered s. 60 in 1948 reprint.

61. Notwithstanding that an officer has attained the age of sixty-five years, if the Commissioner certifies that in the interests of the Public Service it is desirable that such officer should continue in the performance of the duties of his office or of any office in the Public Service to which he may be appointed, and that such officer is able and willing to do so, the Governor may direct such officer to continue in the service for not exceeding such time as the Governor in each case directs, or during pleasure.

Officers of age of sixty-five may be continued in public service by Governor. Ibid., s. 68, re-numbered s. 61 in 1948 reprint.

62. [*Repealed by No. 59 of 1963, s. 23.*]

63. [*Repealed by No. 59 of 1963, s. 24.*]

64. [*Repealed by No. 59 of 1963, s. 25.*]

65. [*Repealed by No. 59 of 1963, s. 26.*]

66. [*Repealed by No. 59 of 1963, s. 27.*]

67. [*Repealed by No. 59 of 1963, s. 28.*]

68. [*Repealed by No. 59 of 1963, s. 29.*]

Notices to be gazetted. *Ibid.*, s. 76, as amended by No. 2 of 1980, s. 18, and re-numbered s. 69 in 1948 reprint.

69. Notices of all appointments, promotions, transfers, retirements, vacations of office, or removals of officers, and of all Orders in Council or Proclamations under this Act, shall be published in the *Government Gazette* within twenty-eight days after making thereof by the Governor, and every such notice shall be deemed and taken to be conclusive evidence of every such appointment, promotion, transfer, retirement, vacation of office, or removal, or of such Order in Council or Proclamation respectively.

All classifications and reclassifications shall also be published in the *Government Gazette*.

Service of Notices on officers whose address is unknown. No. 41 of 1904, s. 77, re-numbered s. 70 in 1948 reprint.

70. (1) In the event of the address for the time being of an officer being unknown to the Commissioner 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 such officer, and a notification of the fact of such posting shall be published in the *Government Gazette*.

(2) So far as regards any such notice, order, or communication, compliance with subsection one of this section shall be deemed a sufficient service of such notice, order, or communication on an officer whose address is unknown as aforesaid.

(3) Where any such notice, order, or communication relates to any charges made against an officer, then if within a time specified in such notice, order, or communication no answer is received by the authority asking whether the officer admits the truth of such charges, he shall be deemed to deny the truth of such charges, and such charges may be inquired into and dealt with in the absence of the officer affected.

Service in Commonwealth not to disqualify for State service. *Ibid.*, s. 78, re-numbered s. 71 in 1948 reprint.

71. The fact that any person is an officer of the Public Service of the Commonwealth shall not disqualify him from also executing the duties of an office in the Public Service of the State.

72. (1) The Governor may arrange with the Governor-General for the performance by an officer in the Public Service of the Commonwealth for the Government of the State of any work or services or for executing the duties of any office in the Public Service of the State.

Officer of Commonwealth may discharge State functions. *Ibid.*, s. 79, re-numbered s. 72 in 1948 reprint.

(2) In any such case the Governor may, by agreement with the Governor-General or otherwise, make arrangements for determining—

Consequent arrangements to be made.

- (a) the rate of payment to be made by the Government of the State for the services to be performed or the work done for the State by such officer ; and
- (b) any matters which may require to be adjusted with regard to the performance of such duties or execution of such work by such officer.

73. Where an officer of the State performs some duties for the Government of the Commonwealth, it shall be lawful for the Governor, by agreement with the Governor-General or otherwise, to make arrangements for determining—

Arrangement for performance of duties by officer. *Ibid.*, s. 80, re-numbered s. 73 in 1948 reprint.

- (a) the rate of payment to be made by the Government of the Commonwealth for the services performed for the Commonwealth by such officer ; and
- (b) any matters which may require to be adjusted with regard to the performance of such duties by such officer.

74. It shall be lawful for the Governor, at the request of the Governor-General, to authorise and cause any work or services to be performed for the Government of the Commonwealth ; and the Governor, by agreement with the Governor-General or otherwise, may make arrangements for determining—

Arrangement for performance of work or services for Commonwealth. *Ibid.*, s. 81, re-numbered s. 74 in 1948 reprint.

- (a) the rate of payment to be made by the Government of the Commonwealth for the performance of such work or services ; and
- (b) any matters which may require to be adjusted with regard to the performance of such work or services.

Officer not to engage in duties unconnected with his office. *Ibid.*, s. 82, re-numbered s. 75 in 1948 reprint.

75. (1) Except with the express permission of the Governor, which permission may at any time be withdrawn, no officer shall—

- (a) accept or continue to hold an office in or under the Government or a paid office in or under any public or municipal corporation ; or
- (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 ; or
- (c) engage in or undertake any such business, whether as principal or agent ; or
- (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.

Effect as to companies.

(2) Nothing herein contained shall be deemed to prevent an officer—

- (a) from becoming a member or shareholder only of any incorporated company or of any company or society of persons registered under any statute ; or
- (b) from accepting and continuing to hold any office in any society founded under the law relating to friendly societies for the benefit of public servants only.

N.S.W. 1902, No. 31, s. 68 (5).

Superannuation, No. 41 of 1904, s. 83, re-numbered s. 76 in 1948 reprint. (See No. 17 of 1930, ss. 7 and 8.)

76. The provisions of the Superannuation Act shall not apply to any person appointed to the Public Service after the commencement of this Act ; and nothing in this Act contained shall be deemed to confer on any person whomsoever any right or privilege under the said Act.

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

Regulations. Ibid., s. 84, as amended by No. 2 of 1930, s. 19, re-numbered s. 77 in 1948 reprint. Repealed and re-enacted by No. 59 of 1963, s. 30.

- (a) for prescribing procedures for the economical and efficient operation, and for the good order and discipline of the Public Service ;
- (b) for providing for the preservation and economy in the use of Her Majesty's property ;
- (c) for prescribing the conduct of officers with respect to—
 - (i) members of the public ;
 - (ii) one another ; and
 - (iii) relations with and between Departments ;
- (d) the establishment, alteration, or abolition of any Department or sub-department ;
- (e) for regulating the hours of attendance of officers and the keeping and method of recording attendances of officers ;
- (f)
 - (i) for requiring a person as a condition of his appointment to the permanent staff of the Public Service to make such financial provision for his retirement therefrom as the regulations prescribe, either by way of assurance of his life with any of the life assurers approved by the Governor on the recommendation of the Commissioner, or by way of contribution to any scheme for superannuation or to any provident or other fund so prescribed ;
 - (ii) for prescribing such schemes of superannuation, provident or other funds and the amount of such financial provision or such contributions ;
 - (iii) for authorising deductions to be made from the salary of any such person and appropriated to that life assurance or those contributions ; and

Operation, order and discipline of Public Service.

Preservation and economy of Government property.

Conduct of officers.

Hours of attendance of officers.

- (iv) for exempting any person or class of persons from complying wholly or in any part with any regulation made under subparagraph (i) of this paragraph ;
- (g) for prescribing conditions precedent to the appointment of officers to, or within the Public Service and the procedure to be followed by officers on their resignation from, or termination of service in, the Public Service ;
- (h) for prohibiting the disclosure or communication by officers, to any person, of government business or information on government affairs, and public comment by officers ;
- (i) for providing the means of communication between officers and Departments and between officers and the Commissioner and for the recognition of any representative body of officers ;
- (j) for requiring officers to occupy any prescribed quarters provided for their use and providing conditions of such occupancy ;
- (k) for prescribing the conditions under which any officer or temporary employee may take, or receive the benefit of, any patent rights, in respect of anything invented or perfected by that officer or temporary employee in the course of his employment in the Public Service ;
- (l) for prescribing the terms upon which the services of a female officer may be terminated upon her marriage ;
- (m) for prescribing fees for witnesses required to give evidence in any inspection, inquiry or investigation under this Act and the fees for examination of candidates for entrance to the Public Service ;
- (n) for providing for the training of officers and—
 - (i) for creating in any Department cadetships for the training of young persons in work requiring in its performance special skill or technical knowledge

usually required only in a profession or occupation distinct from the ordinary routine of the Public Service ;

- (ii) for prescribing all things which, in the opinion of the Governor, are necessary or desirable in relation to cadetships ;
- (o) for notifying all vacancies in offices in the Public Service and the method of applying to be appointed to such vacancies ; and
- (p) for prescribing a penalty of a fine not exceeding fifty pounds for offences against the regulations.

(2) The regulations may be of general application or apply in particular cases and may prescribe the cases in which, and the conditions, if any, under which any person or class of persons shall be exempted either wholly or to such extent as is specified in the regulations from the provisions of the regulations.

FIRST SCHEDULE.

Date.	Title.	Sec. 4. Extent of Repeal.	Heading amended by No. 59 of 1963, s. 31.
64 Vict., No. 21	The Public Service Act, 1900	The whole.	
2 Edw. VII., No. 16	The Public Service Act Amendment Act, 1902.	The whole.	

SECOND SCHEDULE.

Part III and V of this Act.

S. 31 (5). Added by No. 59 of 1963, s. 32.

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