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WESTERN AUSTRALIA

PUBLIC SERVICE ACT 1978

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WESTERN AUSTRALIA

PUBLIC SERVICE ACT 1978

AN ACT to regulate the Public Service.

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Public Service Act 1978*.

[Section 1 substituted by No. 113 of 1987 s. 4.]

Commencement

2. This Act shall come into operation on a date to be fixed by proclamation¹.

Construction in relation to *Industrial Relations Act 1979*

3. (1) This Act shall be read with and subject to the provisions of Division 2 of Part IIA of the *Industrial Relations Act 1979*, 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 Division 2 of Part IIA of the *Industrial Relations Act 1979*, the last-mentioned provisions shall prevail, and the provisions of this Act to the extent by which the effect thereof would but for this section limit, hinder, or obstruct the operation of any provision of Division 2 of Part IIA of the *Industrial Relations Act 1979*, according to the tenor thereof contrary to the object and intention of that Division shall have no effect.

(2) Save and except as provided in subsection (1), the provisions of this Act and the administration of such provisions according to the tenor thereof, shall continue as if Division 2 of Part IIA of the *Industrial Relations Act 1979*, had not been enacted.

[Section 3 amended by No. 94 of 1984 s. 74.]

Repeal

4. [Section 4 omitted under Reprints Act 1984 section 7 (4) (f).]

Interpretation

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

“administrative instructions” means administrative instructions given under section 19;

“chief executive officer” means chief executive officer referred to in section 38;

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

“office” means office in the Public Service;

“officer”, in relation to—

(a) a department, means permanent officer, temporary officer or other officer employed in the department under and subject to this Act; or

(b) an organization, means person who—

(i) is employed in the organization; and

(ii) is a member of the Senior Executive Service;

“organization” means, except in section 25, State trading concern, State instrumentality, State agency or public statutory body, corporate or unincorporate—

(a) established or continued by or under a written law;

and

(b) specified in column 2 of the Schedule;

“permanent officer” means person holding a current appointment to perform functions as an officer in the Public Service for an indefinite period under and subject to this Act;

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

“remuneration” means salary, salary rate, salary range, allowance or other reward for service;

“responsible authority”, in relation to—

- (a) a department, means Minister of the Crown or board, committee or other body for the time being administering the department; or
- (b) an organization, means—
 - (i) board, committee or other body for the time being administering the organization;
and
 - (ii) Minister of the Crown to whom the board, committee or other body referred to in subparagraph (i) is responsible for the administration referred to in that subparagraph;

“senior office” means office or post—

- (a) designated as a senior office under section 39 (1);
or
- (b) referred to in section 39 (3);

“senior officer” means occupier of a senior office;

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

“temporary officer” means person—

- (a) who holds a current appointment to perform functions as an officer in the Public Service for a finite period under and subject to this Act; and
- (b) whose instrument of appointment specifies that he or she is a temporary officer;

“the Acting Commissioner” means the Acting Public Service Commissioner appointed under section 7 (1);

“the Assistant Commissioner” means the Assistant Public Service Commissioner appointed under section 6 (3);

“the Commissioner” means the Public Service Commissioner appointed under section 6 (1);

“the Industrial Commission” means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*;

“the Public Service” means the Public Service referred to in section 20;

“the regulations” means regulations made under section 60 (1);

“the Salaries and Allowances Tribunal” means the Salaries and Allowances Tribunal established by the *Salaries and Allowances Act 1975*;

“the Senior Executive Service” means the Senior Executive Service referred to in section 35.

(2) It is hereby expressly declared that “this Act”, except in section 60, includes the regulations and administrative instructions.

[Section 5 substituted by No. 113 of 1987 s. 5.]

PART II—THE PUBLIC SERVICE COMMISSIONER

[Heading amended under Reprints Act 1984 s. 7 (5) (a).]

Division 1—Constitution, Membership, Meetings, etc².

Appointment, etc., of Public Service Commissioner and Assistant Public Service Commissioner

6. (1) The Governor may appoint a person to be the Public Service Commissioner.

(2) The Commissioner shall be appointed under subsection (1) for such term not exceeding 7 years as is specified in the instrument of his or her appointment and is on the expiry of that term eligible for reappointment.

(3) Following receipt of advice from the Commissioner, the Governor may appoint a person to be the Assistant Public Service Commissioner for such term not exceeding 5 years as is specified in the instrument of his or her appointment and the person so appointed shall act in conjunction with the Commissioner in the performance of such functions as are delegated to him or her under section 12 (1).

(4) If a person appointed under subsection (1) or (3) to be the Commissioner or the Assistant Commissioner is at the time of his or her appointment above the age of 58 years, the term of his or her appointment shall be for a period not longer than the period that will expire on his or her attaining the age of 65 years.

(5) Notwithstanding that the Commissioner or the Assistant Commissioner has attained the age of 65 years, the Governor may, if he or she considers it desirable that the Commissioner or the Assistant Commissioner should continue to hold office, extend the term of office of the Commissioner or the Assistant Commissioner for such time as the Governor thinks fit.

(6) If the Commissioner or the Assistant Commissioner, immediately prior to his or her appointment under subsection (1) or (3), occupied an office in the Public Service under and subject to this Act, he or she shall, if—

- (a) he or she resigns his or her office as the Commissioner or the Assistant Commissioner; or
- (b) his or her term of office as Commissioner or the Assistant Commissioner expires by effluxion of time, otherwise than by his or her attaining the age of 65 years or by the expiry of his or

her term of office as extended under subsection (5), as the case requires, and he or she is not reappointed under that subsection, be entitled to be appointed to an office in the Public Service under and subject to this Act not lower in level of classification than the office which he or she so occupied immediately prior to his or her appointment under subsection (1) or (3) and, if he or she, being a contributor within the meaning of the *Superannuation and Family Benefits Act 1938*, then accepts an appointment to an office in the Public Service under and subject to this Act, section 6 (4) of that Act does not apply to or in relation to him or her.

[Section 6 substituted by No. 113 of 1987 s. 6³.]

Acting Public Service Commissioner

7. (1) The Governor may appoint a person to be the Acting Public Service Commissioner for such term not exceeding 7 years as is specified in the instrument of his or her appointment and, while the Commissioner is ill, absent or suspended from office under section 9 (1) and unable to perform his or her functions, the person so appointed—

- (a) shall act in the office; and
- (b) has all the functions, obligations and immunities, of the Commissioner.

(2) The Acting Commissioner shall, in respect of any period during which he or she acts in the office of the Commissioner, receive such remuneration as is from time to time determined by the Salaries and Allowances Tribunal.

(3) Any functions of the Commissioner performed by the Acting Commissioner shall be deemed to have been performed while the Commissioner was ill, absent or suspended from office under section 9(1) and unable to perform his or her functions unless the contrary is proved.

[Section 7 substituted by No. 113 of 1987 s. 7.]

Rights

8. (1) The Commissioner and the Assistant Commissioner shall each of them receive such remuneration as is from time to time determined by the Salaries and Allowances Tribunal.

[(2) repealed]

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

(4) If the Commissioner or the Assistant Commissioner, immediately prior to his or her appointment, occupied an office in the Public Service under and subject to this Act, he or she shall continue to retain his or her existing and accruing rights, including his or her rights, if any, under the *Superannuation and Family Benefits Act 1938*, as if his or her service as the Commissioner or the Assistant Commissioner, as the case requires, were service as an officer in the Public Service under and subject to this Act.

[Section 8 amended by No. 113 of 1987 s. 8.]

Suspension and removal

9. (1) The Commissioner and the Assistant Commissioner may each of them be suspended from office by the Governor, but shall not be removed from office except as provided in this section.

(2) There shall be laid before both Houses of Parliament a full statement of the grounds of suspension under subsection (1) of the Commissioner or the Assistant Commissioner, as the case requires, within 7 sitting days after that suspension, if Parliament is in session and actually sitting, or if Parliament is not in session or not actually sitting, within 7 sitting days after the commencement of the next session or sitting.

(3) If the Commissioner or the Assistant Commissioner has been suspended under subsection (1), he or she shall be restored to office unless each House of Parliament, within 21 sitting days after the statement referred to in subsection (2) has been so laid before it, presents to the Governor an address praying for the removal of the Commissioner or the Assistant Commissioner, as the case requires, on the grounds of proved misbehaviour or incapacity.

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

(5) If the Commissioner or the Assistant Commissioner, having been suspended under subsection (1), is restored to office, he or she shall receive arrears of remuneration in full from the date on which he or she was so suspended.

[Section 9 amended by No. 113 of 1987 s. 9.]

Vacation of office

10. The office of the Commissioner or the Assistant Commissioner becomes vacant if—

- (a) he or she is removed from office under section 9;

- (b) he or she engages in any paid employment outside the duties of his or her office, without the approval of the Governor;
- (c) he or she becomes an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (d) he or she becomes permanently incapable of performing his or her duties as the Commissioner or the Assistant Commissioner;
- (e) he or she absents himself or herself from duty for any period in excess of 7 days in any period of 12 months, other than—
 - (i) any period of leave of absence to which he or she is entitled; or
 - (ii) any other period of leave of absence approved by the Governor;
- (f) he or she resigns his or her office by writing under his or her hand addressed to the Governor; or
- (g) his or her term of appointment expires and he or she is not re-appointed.

[Section 10 amended by No. 113 of 1987 s. 30.]

[11. Section 11 repealed by No. 113 of 1987 s. 10.]

Delegation

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

(2) The Commissioner shall by instrument in writing delegate to the chief executive officer of the department responsible for the administration of the Senior Executive Service (in this section called "the delegate") such of his or her functions as are necessary for that administration.

(2a) The delegate may, by instrument in writing, subdelegate to any officer or other person (in this section called "the subdelegate"), either generally or to the extent provided in the instrument of subdelegation, all or any of the functions delegated to the delegate, except this power of delegation, so that the functions subdelegated under this subsection may be performed by the subdelegate in accordance with the instrument of subdelegation.

(3) If, under any delegation or subdelegation made to him or her, any delegate or subdelegate, as the case requires, makes any recommendation with regard to any department or organization, the chief executive officer

of the department or organization may request that the recommendation be referred to the Commissioner, and in that event the recommendation of the delegate or subdelegate shall not be deemed to be a recommendation of the Commissioner unless it is endorsed by the Commissioner.

(4) Nothing in this section prevents or limits the application to a power or duty of delegation or subdelegation conferred or imposed by this section of paragraph (d) or (f) of subsection (1) of section 59 of the *Interpretation Act 1984*, or of—

- (i) any other provision of that section; or
- (ii) section 58 of that Act.

(5) For the purposes of subsection (4), the reference in section 59 (1) of the *Interpretation Act 1984* to the conferment by a written law on a person of the power to delegate the exercise of any power or the performance of any duty conferred or imposed on that person under a written law includes a reference to the imposition by a written law on a person of the duty to make such a delegation.

[Section 12 amended by No. 113 of 1987 s. 11.]

Immunity

13. No action shall be brought or maintained against any person who is, or has been, the Commissioner or a delegate or subdelegate under section 12 (1) or (2), as the case requires, in respect of anything done or omitted to be done by or on behalf of the Commissioner or that delegate or subdelegate under or for the purposes, or apparently under or for the purposes, of this Act.

[Section 13 amended by No. 113 of 1987 s. 12.]

Division 2—Functions and Powers

Functions and powers

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

(2) The Commissioner is hereby empowered to do all things he or she considers necessary, expedient, or desirable to discharge the functions referred to in subsection (1) and to exercise all his or her other powers expressed or implied.

(3) Without limiting the generality of the powers as provided by subsection (2), the Commissioner has, subject to section 30, Division 2 of Part III and section 49, exclusive authority to—

- (a) create, transfer, and abolish offices;

- (b) classify, raise, lower, or otherwise alter the classification of offices or work;
- (c) appoint, transfer, or promote officers;
- (d) determine the remuneration applicable to particular offices or classes of office in all cases in which that remuneration is not determinable by the Salaries and Allowances Tribunal;
- (e) determine remuneration for officers and determine the conditions under which that remuneration is payable in all cases in which that remuneration is not determinable by the Salaries and Allowances Tribunal;
- (f) retire, dismiss, call upon to resign, or otherwise terminate the services of officers.

[Section 14 amended by No. 113 of 1987 s. 13.]

Reports

15. 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.

[Section 15 amended by No. 113 of 1987 s. 30.]

Power of entry

16. The Commissioner and persons authorized by him or her in that behalf may enter the premises of any department or organization for the purpose of performing the functions of the Commissioner.

[Section 16 amended by No. 113 of 1987 s. 14.]

Inspections, inquiries and investigations

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

[Section 17 amended by No. 113 of 1987 s. 30.]

Power to summon witnesses and take evidence on oath

18. (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 or her custody or control material to the inquiry, and the Commissioner may examine such person upon oath touching any matter to be inquired into.

(2) If without reasonable cause any person not being an officer summoned pursuant to this section, after being paid or tendered his or her reasonable expenses, neglects or fails to appear or refuses to be sworn or to answer any question put to him or her by the Commissioner or to produce all books, documents, or writings pursuant to such summons, he or she shall be liable to pay a penalty not exceeding \$300, to be recovered by any authorized officer in any court of competent jurisdiction.

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

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

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

[Section 18 amended by No. 113 of 1987 s. 30.]

Administrative instructions and their effect

19. (1) To the extent that it is practicable to do so, the Commissioner may perform his or her functions by administrative instructions published, notwithstanding section 41 of the *Interpretation Act 1984*, in Public Service notices but not in the *Gazette*.

(2) Administrative instructions are subsidiary legislation, but section 42 of the *Interpretation Act 1984* does not apply to or in relation to them.

(3) Administrative instructions shall come into operation on the day on which they are published under subsection (1) or on such later day as is specified in them.

[Section 19 substituted by No. 113 of 1987 s. 15.]

PART III—THE PUBLIC SERVICE

Division 1—General

[Division heading inserted by No. 113 of 1987 s. 16.]

Constitution of Public Service

20. The Public Service shall be constituted by—

- (a) departments and sub-departments; and
- (b) organizations, insofar as any posts in them, or persons employed in them, or both, belong to the Senior Executive Service.

[Section 20 amended by No. 113 of 1987 s. 17.]

Departments

21. The Governor may, on the recommendation of the Commissioner—

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

[Section 21 amended by No. 113 of 1987 s. 30.]

Sub-departments

22. The Governor may, on the recommendation of the Commissioner—

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

[Section 22 amended by No. 113 of 1987 s. 30.]

Organization of departments substituted, amalgamated or divided

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

[Section 23 amended by No. 113 of 1987 s. 30.]

Organization of sub-departments substituted, amalgamated or divided

24. Where sub-departments are established in lieu of existing sub-departments or by the amalgamation or division of existing sub-departments, the Commissioner may, by notice published in Public Service notices, specify the disposition of offices and officers, the classifications and titles applicable to offices and officers and such other consequential changes which appear necessary to give effect to the change in sub-departments.

[Section 24 amended by No. 113 of 1987 s. 30.]

Absorbed personnel

25. (1) Where a body or an organization becomes a part of the Public Service and a person who was employed by that body or organization immediately prior to it doing so receives by reason thereof an appointment as an officer within the meaning of this Act, that appointment is not subject to the provisions of Division 4 of Part IIA of the *Industrial Relations Act 1979*.

(2) Where, in respect of an appointment referred to in subsection (1), the Commissioner determines that the remuneration payable to the officer shall be at a rate less than was payable to him or her as an employee of the body or organization immediately prior to it becoming part of the Public Service, the officer may, in the manner prescribed under Division 2 of Part IIA of the *Industrial Relations Act 1979* appeal to the Industrial Commission constituted by a Public Service Arbitrator appointed under that Division against any provision of that determination, and notwithstanding any provision of that Act, the Arbitrator has jurisdiction to hear and determine the appeal.

[Section 25 amended by No. 94 of 1984 s. 77; No. 113 of 1987 s. 30.]

Power of Commissioner to take action against certain officers for inefficiency

26. (1) For the purposes of this section, a subordinate officer is inefficient if and only if he or she does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard of efficiency that a person may reasonably be expected to attain or sustain in the performance of those functions.

(2) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether or not a subordinate officer has, in the performance of the functions that he or she is required to perform, attained or sustained the standard of efficiency referred to in subsection (1), regard—

(a) shall be had to—

(i) any written selection criteria or job specifications applicable to;

- (ii) any duty statement describing; and
 - (iii) any written work standards or instructions relating to the manner or performance of,
those functions; and
- (b) may be had to—
- (i) any written selection criteria or job specifications applicable to;
 - (ii) any duty statement describing; and
 - (iii) any written work standards or instructions relating to the manner of performance of,
functions similar to those functions.
- (3) The Commissioner may in respect of a subordinate officer who is in the opinion of the Commissioner inefficient—
- (a) withhold for such period as the Commissioner thinks fit an increment of remuneration otherwise payable to that subordinate officer;
 - (b) reduce the level of classification of that subordinate officer and transfer that subordinate officer from his or her office to an office or functions of that reduced level of classification; or
 - (c) terminate the services in the Public Service of that subordinate officer.
- (4) The Commissioner shall, before forming an opinion referred to in subsection (3), conduct an inquiry into whether or not the subordinate officer concerned is inefficient.
- (5) A subordinate officer who is aggrieved by a decision of the Commissioner made under subsection (3) may appeal against that decision to the Industrial Commission constituted by a Public Service Appeal Board appointed under Division 2 of Part IIA of the *Industrial Relations Act 1979*, and that Public Service Appeal Board has jurisdiction to hear and determine that appeal under and subject to that Division.

(6) In this section—

“subordinate officer” means officer other than—

- (a) a chief executive officer; or
- (b) a section 39 (3) officer within the meaning of section 42A.

[Section 26: Sections 26, 27, 28 and 29 repealed and section 26 substituted by No. 113 of 1987 s. 18.]

[27., 28., 29. Sections 27, 28 and 29 repealed and section 26 substituted by No. 113 of 1987 s. 18.]

Particular appointments

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

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

(2) A person may be appointed under subsection (1) (a) for a term fixed by the Commissioner and, if so appointed, is eligible for reappointment under that subsection after the expiry of that term.

(3) A person may be appointed under subsection (1) (a) as a permanent officer, temporary officer or other officer.

(4) If there is an inconsistency between any terms and conditions determined under subsection (1) (a) and any provision of this Act, those terms and conditions shall prevail to the extent of that inconsistency.

[Section 30 amended by No. 113 of 1987 s. 19⁴.]

Permanent officers and fixed term offices

30A. (1) The Commissioner may appoint a person who is a permanent officer to an office for a term fixed by the Commissioner and that person is, on the expiry of that term, eligible for reappointment to the office.

(2) If a person who is eligible under subsection (1) for reappointment to an office (in this subsection called “the fixed term office”) is not so reappointed, the Commissioner shall appoint that person to—

- (a) another office; or
- (b) functions,

having the same level of classification as the fixed term office.

[Section 30A inserted by No. 113 of 1987 s. 20⁵.]

Appointment of “government employee” as an officer

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

- (a) is a Government officer as defined by section 80C of the *Industrial Relations Act 1979*; and
- (b) is not an officer within the meaning of this Act, but is employed to assist in the performance of duties ordinarily performed by or within a department or of related duties,

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

(2) Where a “government employee” receives an appointment as an officer within the meaning of this Act that appointment is not subject to the provisions of Division 4 of Part IIA of the *Industrial Relations Act 1979*.

[Section 31 amended by No. 94 of 1984 s. 78; No. 113 of 1987 s. 30.]

Applications by temporary officers to become permanent officers

32. (1) Any person who has been continuously employed as a temporary officer for a period exceeding 5 years, and whose duties are similar to those of a permanent officer, may apply to the Commissioner for appointment as a permanent officer.

(2) The Commissioner shall determine any application made pursuant to subsection (1) and an appeal shall lie to the Industrial Commission constituted by a Public Service Appeal Board appointed under Division 2 of Part IIA of the *Industrial Relations Act 1979* from any determination of the Commissioner so made.

[Section 32 amended by No. 94 of 1984 s. 79; No. 113 of 1987 s. 30.]

Restrictions on certain appointments outside the Public Service

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

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

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

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

[Section 33 amended by No. 113 of 1987 s. 30.]

Advertisement of vacant offices

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

[Section 34 amended by No. 113 of 1987 s. 30.]

Division 2—Senior Executive Service

[Division 2 inserted by No. 113 of 1987 s. 21⁶.]

Constitution of Senior Executive Service

35. (1) Subject to this section, the Senior Executive Service consists of—

- (a) each officer employed in a department whose salary;
- (b) each office in a department or post in an organization the salary attached to which; and
- (c) each person employed in an organization whose salary,

exceeds such level as is prescribed in the regulations for the purposes of this subsection and who, or the holder of which, as the case requires, becomes a member of the Senior Executive Service by virtue of—

- (d) section 21 (2) or (3) of the *Acts Amendment (Public Service) Act 1987*;
- or
- (e) an appointment under section 40 (1) or 42C.

(2) The Senior Executive Service—

- (a) excludes such officer, holder of an office, office, post, holder of a post, or person referred to in subsection (1) as is the subject of a declaration in force under subsection (3); but

- (b) includes such officer, holder of an office, office, post, holder of a post or person not referred to in subsection (1) as is the subject of a declaration in force under subsection (5).

(3) The Governor may from time to time on the recommendation of the Commissioner by notice published in Public Service notices—

- (a) declare that an officer, holder of an office, office, post, holder of a post or person referred to in subsection (1) is excluded from the Senior Executive Service on and from such day, not being a day earlier than the day of that publication, as is specified in that declaration; or
- (b) repeal or amend a declaration made under this subsection.

(4) If a declaration is made under subsection (3) (a) in respect of an officer who was, immediately before the day specified in that declaration, a member of the Senior Executive Service, that officer continues to be a member of the Public Service on the same terms and conditions as those to which he was entitled as a member of the Senior Executive Service until, subject to this Act, he retires or his services are otherwise terminated under this Act.

(5) The Governor may from time to time on the recommendation of the Commissioner by notice published in Public Service notices—

- (a) declare that an officer, holder of an office, office, post, holder of a post or person not referred to in subsection (1) is included in the Senior Executive Service on and from such day, not being a day earlier than the day of that publication, as is specified in that declaration;
- or
- (b) repeal or amend a declaration made under this subsection.

(6) An officer or person to whom a declaration made under subsection (3) or (5) relates may be identified in that declaration by name or by any other means of identification.

(7) The Commissioner shall, before making a recommendation referred to in subsection (3) or (5), consult the chief executive officer or responsible authority of the department or organization in which the officer, holder of an office, office, post, holder of a post or person to whom or which the proposed recommendation relates is employed or is located, as the case requires.

(8) A person who is a member of the Senior Executive Service is by virtue of his or her membership thereof employed by the Commissioner.

[Section 35: See note under Division heading.]

Purposes of Senior Executive Service

36. The purposes of the Senior Executive Service are—

- (a) to provide for a group of officers who—
 - (i) may undertake higher level policy advice, managerial and professional responsibilities in departments and organizations; and
 - (ii) may be deployed within departments and organizations, and by the Commissioner between departments and organizations, so as best to promote the efficiency of the Public Service;
- and
- (b) to promote the efficiency of individual departments and organizations.

[Section 36: See note under Division heading.]

Chief executive officers

37. There shall be a chief executive officer for each department or organization.

[Section 37: See note under Division heading.]

Functions of chief executive officers

38. (1) A chief executive officer—

- (a) who is the chief executive officer of a department is responsible to the responsible authority of the department for the general management of the department; or
- (b) who is the chief executive officer of an organization is responsible to the responsible authority of the organization for the general management of the organization.

(2) A chief executive officer shall—

- (a) consult and work with the Commissioner for the purpose of achieving the most effective, efficient and economic management of his or her department or organization, as the case requires; and
- (b) perform such other functions as are imposed on chief executive officers generally or on the holder of his or her office by this Act or by any other written law.

(3) A chief executive officer may delegate, either generally or as otherwise provided by the instrument of delegation, to any other officer in his or her department or organization specified in that instrument any of his or her powers or duties under this Act, other than this power of delegation.

[Section 38: See note under Division heading.]

Senior officers

39. (1) The Governor may from time to time on the recommendation of the Commissioner by notice published in Public Service notices—

- (a) designate an office in a department or a post in an organization as a senior office in which the holder of that office or post is required to perform the more responsible administrative or professional, or administrative and professional, functions of his or her department or organization; or
- (b) repeal or amend a designation made under this subsection.

(2) The Commissioner shall, before making a recommendation referred to in subsection (1), consult the chief executive officer or responsible authority of the department or organization in which the office or post to which the proposed recommendation relates is located.

(3) An office, the holder of which is required as part of his or her functions to be a member of the responsible authority of the department or organization in which he or she is employed, being a responsible authority which is a board, committee or other body, is a senior office.

[Section 39: See note under Division heading.]

Appointment of chief executive officers and senior officers

40. (1) The Governor may on the recommendation of the Commissioner appoint a person, whether or not an officer, to fill a vacancy in the office of a chief executive officer or in a senior office for such term not exceeding 5 years as is specified in the instrument of his or her appointment.

(2) Subject to section 41, a person appointed under subsection (1) is on the expiry of his or her term of office eligible for reappointment under that subsection.

[Section 40: See note under Division heading.]

Conditions of appointment of chief executive officers and senior officers

41. (1) A person appointed under section 40 (1) shall be so appointed—

- (a) as a permanent officer; or
- (b) on the basis of terms and conditions agreed between that person and the Commissioner.

(2) A person referred to in subsection (1) (a) who, immediately prior to his or her appointment under section 40 (1), occupied an office continues after that appointment to retain his or her existing and accruing rights, including his or her rights, if any, under the *Superannuation and Family Benefits Act 1938*.

(3) Subject to this Act, a person referred to in subsection (1) (a) is, on—

- (a) the expiry of the term of his or her office as chief executive officer or senior officer (in this subsection called “the first office”);
- (b) his or her resignation of the first office; or
- (c) the abolition of the first office,

eligible for—

- (d) reappointment to the first office if the first office has not been abolished or that person has not resigned from the first office; or
- (e) appointment to—
 - (i) another office as chief executive officer or senior officer;
 - (ii) another office in the Senior Executive Service; or
 - (iii) the Senior Executive Service generally, at the same level of classification as that of the first office,

and, if he or she, being a contributor within the meaning of the *Superannuation and Family Benefits Act 1938*, then accepts a reappointment or appointment referred to in paragraph (d) or (e), section 6 (4) of that Act does not apply to or in relation to him or her.

(4) On the expiry of his or her term of office, a person referred to in subsection (1) (b) is eligible for reappointment under section 40 (1).

(5) If there is an inconsistency between any terms or conditions referred to in subsection (1) (b) and any provision of this Act (other than section 42), those terms and conditions shall prevail to the extent of that inconsistency.

[Section 41: See note under Division heading.]

Transfer of chief executive officers and senior officers

42. (1) The Governor may at any time on the recommendation of the Commissioner transfer an officer from his or her office of chief executive officer or senior officer to—

- (a) another office of chief executive officer or senior officer that is vacant;
- (b) any vacant office in the Senior Executive Service other than an office referred to in paragraph (a); or
- (c) the performance of other functions in the Senior Executive Service generally.

(2) The Commissioner shall, before making a recommendation referred to in subsection (1), consult—

- (a) in the case of a chief executive officer, the responsible authority of the department or organization in which the office of the chief executive officer is located;
- (b) in the case of a senior officer, the chief executive officer of the department or organization in which the office of the senior officer is located; and
- (c) the chief executive officer or senior officer to whom the proposed recommendation relates.

(3) An officer who is transferred under subsection (1) retains the level of classification of the office from which he or she is transferred.

(4) When an officer was appointed on the basis referred to in section 41 (1) (b) to the office from which he or she is transferred under subsection (1), the terms and conditions on the basis of which he or she was so appointed continue to apply to him or her notwithstanding that transfer.

[Section 42: See note under Division heading.]

**Power of Commissioner to take action
against chief executive officers or certain
senior officers for inefficiency**

42A. (1) If the Commissioner is satisfied after conducting an inquiry that a chief executive officer or section 39 (3) officer is inefficient, the Governor may, on the recommendation of the Commissioner in respect of the chief executive officer or section 39 (3) officer—

- (a) withhold an increment of remuneration otherwise payable to the chief executive officer or section 39 (3) officer for such period as the Commissioner thinks fit;
- (b) reduce the level of classification of the chief executive officer or section 39 (3) officer and transfer the chief executive officer or section 39 (3) officer from his or her office to an office or functions of that reduced level of classification; or
- (c) terminate the services in the Public Service of the chief executive officer or section 39 (3) officer.

(2) For the purposes of this section, a chief executive officer or section 39 (3) officer is inefficient if and only if he or she does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard of efficiency that a person may reasonably be expected to attain or sustain in the performance of those functions.

(3) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether or not a chief executive officer or section 39 (3) officer has, in the performance of the functions that he or she is required to perform, attained or sustained the standard of efficiency referred to in subsection (2), regard—

(a) shall be had to—

- (i) any written selection criteria or job specifications applicable to;
- (ii) any duty statement describing; and
- (iii) any written work standards or instructions relating to the manner of performance of, those functions; and

(b) may be had to—

- (i) any written selection criteria or job specifications applicable to;
- (ii) any duty statement describing; and
- (iii) any written work standards or instructions relating to the manner of performance of, functions similar to those functions.

(4) In this section—

“section 39 (3) officer” means holder of an office referred to in section 39 (3).

[Section 42A: See note under Division heading.]

Acting chief executive officers and senior officers

42B. (1) Subject to this section, the Commissioner may—

(a) if an office of chief executive officer or senior officer is vacant, or a chief executive officer or senior officer is absent from duty or for any reason unable to perform his or her functions, direct an officer to act for such period not exceeding 12 months as is specified in that direction in the office of—

- (i) chief executive officer or senior officer during that vacancy; or
 - (ii) the chief executive officer or senior officer during that absence or inability,
- as the case requires; and

(b) at any time cancel a direction given under this subsection.

(2) The Commissioner shall, before giving a direction under subsection (1), consult—

(a) if the proposed direction relates to the office of a chief executive officer, the responsible authority; or

(b) if the proposed direction relates to the office of a senior officer, the chief executive officer, of the department or organization in which that office is located.

(3) An officer directed under subsection (1) to act in an office—

(a) shall comply with that direction; and

(b) has, whilst he or she is so acting, all the functions and obligations attaching to the office.

[Section 42B: See note under Division heading.]

Appointment of officers other than chief executive officers or senior officers to Senior Executive Service generally

42C. (1) Without limiting the generality of the powers of the Commissioner as provided by section 14 (2), the Commissioner may in accordance with section 42F and procedures set out in administrative instructions appoint persons or officers (not being chief executive officers or senior officers) to the Senior Executive Service generally.

(2) A person or officer appointed under subsection (1) shall be so appointed—

(a) as a permanent officer; or

(b) as an officer on the basis of terms and conditions agreed between that person and the Commissioner.

(3) An appointment under subsection (1) shall be to such level of classification as is determined by the Commissioner—

(a) in accordance with administrative instructions; and

(b) as being appropriate to the functions to be performed by the person or officer so appointed.

(4) The appointment of an officer referred to in subsection (2) (b) shall be for such term not exceeding 5 years as is specified in the instrument of his or her appointment.

(5) If there is an inconsistency between the terms and conditions referred to in subsection (2) (b) and any provision of this Act (other than section 42G), those terms and conditions shall prevail to the extent of that inconsistency.

(6) On the expiry of his or her term of office by effluxion of time, an officer referred to in subsection (2) (b) is eligible for reappointment under subsection (1)—

(a) as a permanent officer; or

(b) as an officer on the basis of terms and conditions agreed between that person and the Commissioner.

[Section 42C: See note under Division heading.]

Appointment of officers to offices, other than the offices of chief executive officers or senior offices, in Senior Executive Service

42D. (1) The Commissioner may, after consultation with the chief executive officer of the department or organization in which an office in the Senior Executive Service (not being an office referred to in section 40 (1)) is located, in accordance with section 42F and procedures set out in administrative instructions appoint an officer to fill a vacancy in that office for such term not exceeding 5 years as is specified in the instrument of his or her appointment.

(2) On the expiry of his or her term of office by effluxion of time, an officer appointed under subsection (1) is entitled to—

(a) reappointment under subsection (1) to the office the term of which has expired; or

(b) appointment to—

(i) an office, other than the office referred to in paragraph (a); or

(ii) the performance of functions,

in the Senior Executive Service at the same level of classification as that of the office to which he or she was appointed under subsection (1),

whichever alternative is offered to him or her by the Commissioner.

(3) A person shall not be appointed under subsection (1) before, but may be so appointed at the same time as or after, his or her appointment under section 42C (1).

[Section 42D: See note under Division heading.]

Remuneration in Senior Executive Service

42E. Without limiting the generality of the powers of the Commissioner as provided by section 14 (2), the Commissioner may determine—

(a) the remuneration payable to officers, or in respect of levels of classification or of offices, in the Senior Executive Service; and

(b) the conditions under which the remuneration referred to in paragraph (a) is payable,

in all cases in which that remuneration or those conditions are not determinable by the Salaries and Allowances Tribunal.

[Section 42E: See note under Division heading.]

Selection of persons, including officers, for appointment under section 42C or 42D

42F. (1) In the selection of a person or officer for appointment under section 42C or 42D consideration shall be given only to the relative merit of the persons or officers available for that appointment.

(2) For the purposes of subsection (1)—

“merit”, in relation to a person or officer, means suitability of the person or officer for the performance of the functions—

- (a) of the office, or the level of classification, in the Senior Executive Service to which the person or officer is being considered for appointment;
- (b) of any office, or level of classification, in the Senior Executive Service (other than the office, or level of classification, referred to in paragraph (a))—
 - (i) to which the person or officer may be appointed; and
 - (ii) which has the same level of classification as that of the office, or level of classification, referred to in paragraph (a);

and

- (c) assigned to the level of classification in the Senior Executive Service to which the person or officer is being considered for appointment and any other functions which may be assigned to that level of classification,

having regard to—

- (d) the purposes of the Senior Executive Service specified in section 36;
- (e) the capacity of the person or officer to perform the functions referred to in paragraphs (a), (b) and (c);
- (f) the standard of work previously performed by the person or officer in other offices, levels of classification, positions or occupations, whether in the Public Service or elsewhere;
- (g) any experience and personal qualities possessed by the person or officer which are relevant to the performance of the functions referred to in paragraphs (a), (b) and (c);
- (h) the training and educational qualifications of the person or officer; and
- (i) the potential for further career development of the person or officer in the Senior Executive Service.

(3) The Commissioner may under section 19 give administrative instructions setting out procedures for the selection of persons and officers in accordance with this section.

(4) The Commissioner shall, before giving any administrative instructions referred to in subsection (3), consult such responsible authorities or chief executive officers or both as the Commissioner thinks fit.

[Section 42F: See note under Division heading.]

Transfer of officers, other than chief executive officers and senior officers, within Senior Executive Service

42G. (1) The Commissioner may at any time transfer an officer, other than a chief executive officer or a senior officer, from the performance of any functions, or from any office, in the Senior Executive Service to—

- (a) any functions or any other functions; or
- (b) any office or any other office,

as the case requires, in the Senior Executive Service of the same level of classification as the functions from the performance of which, or office from which, that officer is transferred.

(2) The Commissioner shall, before transferring an officer under subsection (1), consult—

- (a) the chief executive officer of the department or organization from which the officer is proposed to be transferred;
- (b) the chief executive officer of the department or organization to which the officer is proposed to be transferred; and
- (c) the officer.

(3) When an officer has been appointed within the meaning of section 42C (2) (b) to the Senior Executive Service generally, the terms and conditions on the basis of which he or she has been so appointed continue to apply to him or her notwithstanding that he or she is transferred under subsection (1).

[Section 42G: See note under Division heading.]

PART IV—DISCIPLINE

Application and interpretation

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

[Section 43 amended by No. 113 of 1987 s. 30.]

Offences and penalties

44. (1) Every officer who—

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

is guilty of an offence.

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

- (a) reprimand;
- (b) transfer to another office;
- (c) transfer to another department or, in the case of an officer in the Senior Executive Service, to a department or organization other than the department or organization in which he was serving at the time of the offence;
- (d) a fine not exceeding \$500;
- (e) reduction in salary;
- (f) reduction in classification;
- (g) requirement to resign;
- (h) dismissal.

[Section 44 amended by No. 113 of 1987 s. 22.]

Powers as to offences

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

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

but where it appears to the chief executive officer that the offence of which the officer is guilty is a minor one, the chief executive officer may reprimand him or her or fine him or her a sum not exceeding \$50, without charging the officer with the offence, and if the officer objects to the reprimand or fine within 7 days after the reprimand or fine is imposed and so notifies the chief executive officer, the chief executive officer shall cancel the reprimand or fine and the chief executive officer shall charge the officer with the offence.

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

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

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

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

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

[Section 45 amended by No. 113 of 1987 s. 23.]

Proceedings on charges

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

- (a) reprimand him or her;
- (b) transfer him or her to another office;
- (c) fine him or her a sum not exceeding \$100; or
- (d) recommend to the Commissioner that one or more of the other penalties specified in section 44 (2) be imposed on the officer, and, if the chief executive officer does so recommend, the Commissioner may accept or reject that recommendation in whole or in part and take action accordingly.

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

[Section 46 amended by No. 113 of 1987 s. 24.]

Appeal against certain penalties

47. An officer fined or transferred to another office by the chief executive officer under the provisions of section 46(1) may appeal to the Commissioner in the manner prescribed in administrative instructions, and the Commissioner may confirm, reverse, or vary the decision of the chief executive officer.

[Section 47 amended by No. 113 of 1987 s. 30.]

Notice by chief executive officer to the Commissioner and powers of the Commissioner

48. (1) Where it appears to a chief executive officer that an officer is guilty of an offence of such a serious nature or in such circumstances as to warrant proceedings or other action by the Commissioner the chief executive officer may refer the matter to the Commissioner for his or her determination.

(2) The chief executive officer shall notify the Commissioner in the manner and within the time prescribed by administrative instructions of all proceedings and other actions taken by him under sections 45, 46 and 50.

(3) The Commissioner—

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

[Section 48 amended by No. 113 of 1987 s. 30.]

Charges against chief executive officer

49. (1) Where it appears to the responsible authority or the Commissioner that a chief executive officer who has been appointed under and subject to the provisions of this Act is guilty of an offence under section 44 the responsible authority or the Commissioner may do any one or more of the following things—

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

(2) Where the chief executive officer, in writing, admits the truth of the charge to the Commissioner or the Commissioner after inquiry, finds the charge to be proved, he or she shall furnish a report to the Governor, such report to include a recommendation as to the penalty or penalties to be imposed, which may be any one or more of the penalties referred to in section 44 (2).

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

[Section 49 amended by No. 113 of 1987 s. 30.]

Notice of decision

50. The chief executive officer or the Commissioner, as the case requires, shall notify an officer charged with an offence whether or not the charge has been found proved and if found proved the penalty imposed, and such notification shall be in writing in the manner and within the time prescribed by administrative instructions.

[Section 50 amended by No. 113 of 1987 s. 30.]

Appeal against decision or recommendation

51. Where in respect of a charge against an officer for an offence under this Part, the officer is aggrieved with a decision or recommendation made by the Commissioner, the officer may appeal to the Industrial Commission constituted by a Public Service Appeal Board appointed under Division 2 of Part IIA of the *Industrial Relations Act 1979*, and that Board shall have jurisdiction to hear and determine the appeal under and subject to the provisions of that Act.

[Section 51 amended by No. 94 of 1984 s. 81; No. 113 of 1987 s. 30.]

Conviction for an indictable offence

52. Notwithstanding the provisions of The Criminal Code, where an officer during his or her period of service is convicted, on indictment or otherwise, of an indictable offence, or is convicted of such other offence

that is prescribed in regulations or that is one of a class of offences so prescribed, in addition to any action or penalty ordered by a court in respect of the offence, the Commissioner may impose any one or more of the penalties referred to in section 44 (2) except the penalties referred to in paragraphs (d), (e), and (f).

[Section 52 amended by No. 113 of 1987 s. 30.]

Payment of fines

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

PART V—MISCELLANEOUS

Officer not to engage in duties unconnected with his or her office

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

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

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

[Section 54 amended by No. 113 of 1987 s. 30.]

Restriction on communications by members of Parliament

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

[Section 55 amended by No. 113 of 1987 s. 30.]

Service where address unknown

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

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

[Section 56 amended by No. 113 of 1987 s. 30.]

Reorganization within departments and sub-departments

57. When it appears to the responsible authority or chief executive officer of any department necessary or expedient for the more effective, economic, or efficient working of the department or any sub-department or branch thereof that any particular disposition of officers and re-arrangement of work should be effected the matter shall be referred to the Commissioner for consideration and action.

[Section 57 amended by No. 113 of 1987 s. 30.]

Performance of duties and powers of an officer in his or her absence

58. Where in or by any written law or contract or agreement any duty, obligation, right, or power is imposed or conferred upon any officer in his or her capacity as an officer, such duty, obligation, right, or power may be performed or exercised by any officer directed by the Commissioner to perform and exercise the duties, obligations, rights, and powers of such first-mentioned officer during his or her 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.

[Section 58 amended by No. 113 of the 1987 s. 30.]

Long service leave, recreation leave and public service holidays

59. (1) Each officer who has completed—

- (a) a period of 7 years of continuous service in a permanent capacity; or
- (b) 10 years of continuous service in a temporary capacity,

but not including service prior to his or her attaining the age of 18 years shall be entitled to 13 weeks of long service leave on full pay.

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

(3) Each officer is entitled to an additional 13 weeks of long service leave on full pay for each subsequent period of 7 years of continuous service completed by him or her.

(3a) Notwithstanding anything in this section, the Commissioner may under section 19 give administrative instructions providing for the circumstances in which prior service with an employer outside the Public Service is to be regarded as being—

- (a) continuous service; and
- (b) continuous with subsequent continuous service,

in the Public Service for the purposes of this section.

(4) Each officer is entitled to 4 weeks of recreation leave on full pay for each year of service, but the Commissioner may grant to any officer or category of officers, annual leave of absence for recreation in excess of 4 weeks in any one year on full pay, if he or she is of opinion that special circumstances exist by reason of the nature of the duties performed by, or the remoteness of the headquarters from large centres of settlement of, any such officer or category of officers.

(5) Each officer is entitled to—

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

on full pay.

[Section 59 amended by No. 113 of 1987 s. 25.]

Intergovernmental arrangements for services or work

59A. The Governor may arrange with the Governor-General of the Commonwealth for the provision of any services or the performance of any work by—

- (a) an officer or officers for the Commonwealth; or

- (b) an officer or officers of the Public Service of the Commonwealth for the State,

and for all matters incidental to or connected with that provision or performance, including any payments to be made in respect of that provision or performance.

[Section 59A inserted by No. 113 of 1987 s. 26⁸.]

Regulations

60. (1) The Governor may, on the recommendation of the Commissioner, make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular, amending the Schedule.

(2) An amendment of the Schedule made by regulations made under subsection (1) has effect as if made by an Act.

[Section 60 substituted by No. 113 of 1987 s. 27.]

[PART VI. Part VI repealed by No. 113 of 1987 s. 28⁹.]

SCHEDULE

(Section 5 (1))

ORGANIZATIONS

Column 1—item	Column 2—organization
1	Albany Port Authority, constituted under the <i>Albany Port Authority Act 1926</i>
2	Animal Resources Authority, established by the <i>Animal Resources Authority Act 1981</i>
3	Bunbury Port Authority, constituted under the <i>Bunbury Port Authority Act 1909</i>
4	Country High School Hostels Authority, established by the <i>Country High School Hostels Authority Act 1960</i>
5	Commissioner of Main Roads, appointed under the <i>Main Roads Act 1930</i>
6	Dairy Industry Authority of Western Australia, established under the <i>Dairy Industry Act 1973</i>
7	Esperance Port Authority, established by the <i>Esperance Port Authority Act 1968</i>
8	Fremantle Hospital Board, constituted under the <i>Hospitals Act 1927</i>
9	Fremantle Port Authority, constituted under the <i>Fremantle Port Authority Act 1902</i>
10	Geraldton Port Authority, established by the <i>Geraldton Port Authority Act 1968</i>
11	Hedland College, established under the <i>Colleges Act 1978</i>
12	Herd Improvement Service of Western Australia, established by the <i>Herd Improvement Service Act 1984</i>
13	Joondalup Development Corporation, established under the <i>Joondalup Centre Act 1976</i>
14	Kalgoorlie College, established under the <i>Colleges Act 1978</i>
15	Karrakatta Cemetery Board, deemed to have been established under the <i>Cemeteries Act 1986</i>

Column 1—item	Column 2—organization
16	Karratha College, established under the <i>Colleges Act 1978</i>
17	Keep Australia Beautiful Council (W.A.), established by the <i>Litter Act 1979</i>
18	King Edward Memorial Hospital for Women Board, constituted under the <i>Hospitals Act 1927</i>
19	Kings Park Board, constituted under the <i>Parks and Reserves Act 1895</i>
20	Legal Aid Commission of Western Australia, established under the <i>Legal Aid Commission Act 1976</i>
21	Lotteries Commission, constituted by the <i>Lotteries (Control) Act 1954</i>
22	Metropolitan Market Trust, constituted by the <i>Metropolitan Market Act 1926</i>
23	Metropolitan (Perth) Passenger Transport Trust, constituted under the <i>Metropolitan (Perth) Passenger Transport Trust Act 1957</i>
24	Nurses Board of Western Australia, established under the <i>Nurses Act 1968</i>
25	Perth Dental Hospital Board, constituted under the <i>Hospitals Act 1927</i>
26	Perth Theatre Trust, established by the <i>Perth Theatre Trust Act 1979</i>
27	Port Hedland Port Authority, established by the <i>Port Hedland Port Authority Act 1970</i>
28	Princess Margaret Hospital for Children Board, constituted under the <i>Hospitals Act 1927</i>
29	Rottneet Island Board, appointed under the <i>Parks and Reserves Act 1895</i>
30	Royal Perth Hospital Board, constituted under the <i>Hospitals Act 1927</i>
31	Rural Adjustment and Finance Corporation of Western Australia, preserved and continued in existence by the <i>Rural Adjustment and Finance Corporation Act 1971</i>
32	Secondary Education Authority, established by the <i>Secondary Education Authority Act 1984</i>
33	Sir Charles Gairdner Hospital Board, constituted under the <i>Hospitals Act 1927</i>
34	Small Business Development Corporation, established under the <i>Small Business Development Corporation Act 1983</i>
35	South West Development Authority, established by the <i>South West Development Authority Act 1984</i>
36	State Government Insurance Commission, established by the <i>State Government Insurance Commission Act 1986</i>
37	The Agriculture Protection Board of Western Australia, constituted under the <i>Agriculture Protection Board Act 1950</i>
38	The Board of the Art Gallery of Western Australia, referred to in the <i>Art Gallery Act 1959</i>
39	The Library Board of Western Australia, constituted under the <i>Library Board of Western Australia Act 1951</i>
40	The National Trust of Australia (W.A.), established by the <i>National Trust of Australia (W.A.) Act 1964</i>
41	The State Energy Commission of Western Australia, preserved and continued in existence by the <i>State Energy Commission Act 1979</i>
42	The Western Australian Government Railways Commission, constituted under the <i>Government Railways Act 1904</i>

Column 1—item	Column 2—organization
43	The Western Australian Museum, constituted by the <i>Museum Act 1969</i>
44	Totalisator Agency Board, constituted under the <i>Totalisator Agency Board Betting Act 1960</i>
45	Waterways Commission, established by the <i>Waterways Conservation Act 1976</i>
46	Western Australian Alcohol and Drug Authority, established under the <i>Alcohol and Drug Authority Act 1974</i>
47	Western Australian Coastal Shipping Commission, established by the <i>Western Australian Coastal Shipping Commission Act 1965</i>
48	Western Australian Fire Brigades Board, constituted under the <i>Fire Brigades Act 1942</i>
49	Western Australian Meat Commission, constituted under the <i>Abattoirs Act 1909</i>
50	Western Australian Mining and Petroleum Research Institute, constituted by the <i>Mining and Petroleum Research Act 1981</i>
51	Western Australian Post-Secondary Education Commission, referred to in the <i>Western Australian Post-Secondary Education Commission Act 1970</i>
52	Western Australian Tourism Commission, established under the <i>Western Australian Tourism Commission Act 1983</i>
53	Zoological Gardens Board, established under the <i>Zoological Gardens Act 1972</i> .

[Schedule added by No. 113 of 1987 s. 29.]

NOTES

¹ This reprint is a compilation as at 16 March 1988 of the *Public Service Act 1978*^{3,4,5,6,7,8,9,10} and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Public Service Act 1978</i>	86 of 1978	8 November 1978	16 May 1979 (see <i>Gazette</i> 12 April 1979 p. 967)	Part VI transitional (subsequently repealed by No. 113 of 1987 s. 28)
<i>Public Service Amendment Act 1980</i>	18 of 1980	15 October 1980	15 October 1980	
<i>Public Service Amendment Act 1982</i>	2 of 1982	6 May 1982	6 May 1982	
<i>Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984, Part IV</i>	94 of 1984	11 December 1984	Part IV: 1 March 1985 (see <i>Gazette</i> 1 March 1985 p. 778)	Part VI savings and transitional
<i>Acts Amendment (Public Service) Act 1987, Part II</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p. 813)	Sections 6 (2), (3), 19 (2), (3), 20 (2), (3), 21 (2), (3), (4), (5), (6), 25 (2), 26 (2), 28 (2), 31 savings and transitional

2. This heading relates to the Public Service Board which was abolished by No. 113 of 1987.

3. Section 6 (2) and (3) of Act No. 113 of 1987 reads as follows—

“ (2) The person who, immediately before the commencement of this section, held office as the Chairman of the Public Service Board shall on that commencement be deemed to have been appointed to be the Public Service Commissioner under section 6 (1) of the principal Act as amended by this Act for the remainder of the period for which he would, but for that commencement, have continued to hold office as the Chairman of the Public Service Board.

(3) The person who is deemed by subsection (2) to have been appointed to be the Public Service Commissioner is entitled in his capacity as the Public Service Commissioner to—

(a) remuneration at a rate not less than that; and

(b) conditions of service not less favourable than those,

to which he was entitled in his capacity as the Chairman of the Public Service Board. ”.

4. Section 19 (2) and (3) of Act No. 113 of 1987 reads as follows—

“ (2) A person who—

(a) immediately before he became employed under section 30 (a) of the principal Act before its amendment by this section was not an officer within the meaning of the principal Act; and

(b) was immediately before the commencement of this section treated by the Public Service Board as being employed under section 30 (a) of the principal Act for a fixed term,

shall, notwithstanding anything in his or her terms and conditions of employment under that section, be deemed to be an officer within the meaning of the principal Act as amended by this Act—

(c) until the expiry of the period of 6 months beginning on the commencement of this section;

or

(d) if his or her employment under that section is lawfully terminated before the expiry referred to in paragraph (c), until that termination.

(3) The Commissioner shall, before the expiry referred to in subsection (2) (c); offer to a person who is at the time of that offer deemed to be an officer by virtue of subsection (2) appointment as an officer under the principal Act as amended by this Act. ”.

5. Section 20 (2) and (3) of Act No. 113 of 1987 reads as follows—

“ (2) The appointment or promotion by the Public Service Board, at any time during the period commencing on 1 January 1981 and ending immediately before the commencement of this section, of a person who was immediately before that appointment or promotion a permanent officer within the meaning of the principal Act to an office for a term fixed by the Public Service Board shall be deemed to be, and always to have been, valid and lawfully done.

(3) If the term of office of a person appointed or promoted within the meaning of subsection (2) has not expired before the commencement of this section, that term continues to run after that commencement until the time when it would, but for that commencement, have expired, and, after that time, the person so appointed or promoted is eligible for reappointment under section 30A (1) of the principal Act as amended by this section and, in the event of that person not being so reappointed, section 30A (2) of the principal Act as amended by this section applies to that person. ”.

6. Section 21 (2), (3), (4), (5) and (6) of Act No. 113 of 1987 reads as follows—

“(2) On the commencement of this section, each person who was, immediately before that commencement—

- (a) the Permanent Head of a Department shall be deemed to have been appointed to be the chief executive officer of the department;
- (b) the person in charge of an organization within the meaning of the principal Act as amended by this Act and immediately subordinate to the board, committee or other body for the time being administering that organization, being a person whose salary then exceeded the maximum salary referred to in subsection (3), shall be deemed to have been appointed the chief executive officer of that organization; or
- (c) a Senior Officer in a Department, being a person whose salary then exceeded the maximum salary referred to in subsection (3), shall be deemed to have been appointed a senior officer in the department,

under Division 2 of Part III of the principal Act as amended by this Act.

(3) On the commencement of this section—

- (a) each officer employed in a Department; and
- (b) each person employed in an organization within the meaning of the principal Act as amended by this Act,

(other than an officer or person referred to in subsection (2)) whose salary exceeded the maximum salary for Level 8 prescribed in clause 6 (a) of the Public Service Salaries Agreement No. 2 of 1985 immediately before that commencement shall be deemed, subject to any declaration in force under section 35 (3) of the principal Act as amended by this Act, to have been appointed an officer in the Senior Executive Service under the principal Act as amended by this Act in the office or post which he or she occupied immediately before the commencement of this section.

(4) A person who is deemed by subsection (2) or (3) to have been appointed an officer in the Senior Executive Service shall be deemed to have been so appointed subject to the same terms and conditions as those that applied to him or her immediately before the commencement of this section.

(5) Notwithstanding anything in subsection (4), the Commissioner may alter any of the terms and conditions subject to which a person is deemed by that subsection to have been appointed an officer in the Senior Executive Service.

(6) Notwithstanding anything in any other written law, there shall not be paid to a person who is deemed by subsection (2) or (3) to have been appointed an officer in the Senior Executive Service any amount in lieu of leave to which that person became entitled prior to the commencement of this section in his capacity as an officer or as an employee of an organization unless, before any such payment is made, that person consents in writing to the making of that payment. ”.

7. Section 25 (2) of Act No. 113 of 1987 reads as follows—

“(2) Any Administrative Instructions given by the Public Service Board during the period beginning on the commencement of the principal Act and ending immediately before the commencement of this section and providing for the matters referred to in section 59 (3a) of the principal Act as amended by this Act shall be deemed to be, and always to have been, valid and lawfully given. ”.

8. Section 26 (2) of Act No. 113 of 1987 reads as follows—

“(2) Any arrangement made by the Public Service Board with the Commonwealth under regulations made under the principal Act during the period beginning on the

commencement of the principal Act and ending immediately before the commencement of this section for the provision of services or the performance of any work by—

(a) an officer or officers for the Commonwealth;

or

(b) an officer or officers of the Public Service of the Commonwealth for the State or the Government,

and for any matter incidental to or connected with that provision or performance, including any payments to be made in respect of that provision or performance, shall be deemed to be, and always to have been, valid and lawfully made. ”

9. Section 28 (2) of Act No. 113 of 1987 reads as follows—

“ (2) The repeal effected by subsection (1) does not prevent the continuation of any state of affairs created by Part VI of the principal Act and subsisting immediately before the commencement of this section insofar as that state of affairs is consistent with the principal Act as amended by this Act. ”

10. Section 31 of Act No. 113 of 1987 reads as follows—

References to certain words or expressions in written laws

“ 31. (1) Unless the contrary intention appears, a reference in a written law to—

(a) Administrative Instructions shall be construed as if it had been amended so as to become a reference to administrative instructions;

(b) the Chairman of the Public Service Board shall be construed as if it had amended so as to become a reference to the Public Service Commissioner;

(c) a Commissioner of the Public Service Board shall be construed as if it had been amended so as to become a reference to the Public Service Commissioner;

(d) a Department of the Public Service shall be construed as if it had been amended so as to become a reference to a department of the Public Service;

(e) the Deputy Chairman of the Public Service Board shall be construed as if it had been amended so as to become a reference to the Public Service Commissioner;

(f) the Permanent Head, Permanent head or permanent head of a Department shall be construed as if it had been amended so as to become a reference to the chief executive officer of the department;

(g) the Public Service Board shall be construed as if it had been amended so as to become a reference to the Public Service Commissioner;

(h) Public Service Notices shall be construed as if it had been amended so as to become a reference to Public Service notices;

(i) a Senior Officer of a Department shall be construed as if it had been amended so as to become a reference to a senior officer of the department; and

(j) a Sub-Department of the Public Service shall be construed as if it had been amended so as to become a reference to a sub-department of the Public Service,

within the meaning of the principal Act as amended by this Act, and cognate expressions shall be construed accordingly. ”

