

Public Service

No. 6 of 1972

An Act relating to Promotions Appeals in the Public Service of the Commonwealth.

[Assented to 24 March 1972]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Public Service Act 1972*.

(2.) The *Public Service Act 1922–1968** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Public Service Act 1922–1972*.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Transfers, promotions and appeals.

3. Section 50 of the Principal Act is amended—

(a) by omitting sub-sections (5A.) and (5AA.) and inserting in their stead the following sub-sections:—

“(5A.) For the purposes of this section, the Board shall, from time to time, arrange for the constitution of—

(a) such Promotions Appeal Committees for each State as are required; and

(b) such Central Promotions Appeal Committees as are required.

“(5AA.) For the purposes of the determination of an appeal, a decision of a majority of the members of a Promotions Appeal Committee shall be deemed to be the determination of the Committee.”;

(b) by inserting in sub-section (6A.), after the word “ officer ” (second occurring), the words “ who considers that he is more entitled to promotion to the vacant office than the officer provisionally promoted ”; and

* Act No. 21, 1922, as amended by No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 73, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; and Nos. 59 and 114, 1968.

- (c) by omitting sub-sections (8.) to (15.) (inclusive) and inserting in their stead the following sub-sections:—

“(8.) Where an appeal has, or appeals have, been duly made in respect of a provisional promotion—

(a) the person with whom, under the regulations, any such appeal has been lodged shall forward notice of the appeal, and any document by which the appeal was instituted and any other document received by him in connexion with the appeal; and

(b) the Board shall cause to be forwarded full particulars of any such appeal that is an appeal regarded by the Board under the last preceding sub-section as having been made, to a Promotion Appeals Committee that is appropriate in relation to the appeal having regard to the succeeding provisions of this section.

“(8A.) Where, in relation to a provisional promotion, all the parties to the appeal proceedings perform their duties in the one State, a Promotions Appeal Committee for that State shall make full inquiries into the claims of those parties and shall—

(a) except where the next succeeding paragraph applies—determine the appeal or appeals; or

(b) where the vacant office is one in respect of which the rate of salary, or the maximum rate of salary, exceeds such rate as is prescribed for the purposes of this sub-section—make a report to the Board on the claims of those parties.

“(8B.) Upon receipt of a report in accordance with paragraph (b) of the last preceding sub-section, the Board shall determine the appeal or appeals.

“(8C.) Where the parties to the appeal proceedings do not all perform their duties in the one State, a Promotions Appeal Committee for the State in which a party performs his duties, or two or more parties perform their duties, shall make full inquiries into, and make a report to the Board on, the claims of that party or of those parties.

“(8D.) Upon receipt of all the reports required to be made in accordance with the last preceding sub-section by Promotions Appeal Committees in relation to a provisional promotion, the Board shall refer them to a Central Promotions Appeal Committee, and the Committee—

(a) shall examine those reports;

(b) may make such further inquiries (if any) as it thinks necessary into the claims of the parties to the appeal proceedings; and

(c) shall—

- (i) where the office concerned is an office referred to in paragraph (b) of sub-section (8A.) of this section—make a report to the Board on the claims of all the parties to the appeal proceedings; or
- (ii) in any other case—determine the appeal or appeals.

“(8E.) Upon receipt of a report of a Central Promotions Appeal Committee made under sub-paragraph (i) of paragraph (c) of the last preceding sub-section, the Board shall determine the appeal or appeals.

“(8F.) Where there are two or more appellants in respect of the one promotion, the Promotions Appeal Committee determining the appeals or the Board (if the appeals are to be determined by the Board) shall, if it considers that two or more appellants have established the grounds of their appeals, allow the appeal of one only of those appellants, being the appellant whom it considers to have the best claim to promotion to the vacant office having regard to the provisions of sub-section (3.), or sub-section (3A.), of this section, whichever is applicable in relation to the office.

“(9.) Where an appeal is allowed in pursuance of this section, the Board shall cancel the provisional promotion and promote the appellant to the vacant office.

“(10.) Where, in respect of a provisional promotion, no appeal is duly made, the Permanent Head shall confirm the provisional promotion and where, in respect of a provisional promotion, an appeal has, or appeals have, been duly made, but the appeal, or each of the appeals, has been disallowed or has become inoperative, the Board shall confirm the provisional promotion.

“(11.) If, after notification has been made of a provisional promotion to a vacant office but before the promotion has been confirmed, the Board is satisfied that the office is unnecessary or can be filled by the transfer of an excess officer, or that the notification or further notification of the vacancy in the office is desirable, the Board may cancel the provisional promotion.

“(12.) The Board may cancel a provisional promotion in accordance with the last preceding sub-section whether or not there has been an appeal against the provisional promotion, and, where the Board so cancels a provisional promotion, any appeal proceedings in respect of the promotion shall be discontinued.

“(13.) Subject to paragraph (c) of sub-section (15.) of this section, where a party to the appeal proceedings in respect of a provisional promotion performs his duties in a place outside Australia other than a Territory of the Commonwealth, or in a

Territory of the Commonwealth other than the Australian Capital Territory or a Territory in respect of which a regulation made by virtue of the next succeeding sub-section is in force, the provisions of this section apply as if that party performed his duties in such State as is determined in accordance with the regulations.

“(14.) For the purposes of this section—

- (a) the Australian Capital Territory shall be deemed to be a State; and
- (b) the regulations may provide that a specified Territory of the Commonwealth, or two such Territories together, shall be deemed to be a State.

“(15.) For the purposes of this section—

- (a) the parties to the appeal proceedings are the officer provisionally promoted and the appellant or appellants;
- (b) a reference to a Promotions Appeal Committee shall, unless the contrary intention appears, be read as including a reference to a Central Promotions Appeal Committee; and
- (c) where the Board considers it desirable, for the avoidance of doubt or by reason of special circumstances, and not contrary to the interests of any party to the appeal proceedings, to do so, the Board may determine that a party to the appeal proceedings is to be deemed to perform his duties in such State as the Board specifies.

“(16.) For the purposes of this section, an appeal shall be taken to become inoperative if—

- (a) the appeal is withdrawn;
- (b) the appellant ceases to be an officer; or
- (c) the appellant ceases, by reason of the confirmation of his promotion to another office or for any other reason, to be eligible for promotion to the office concerned.”.

4. The Sixth Schedule to the Principal Act is amended by omitting from the form of oath and the form of affirmation the words “the Promotions Appeal Committee constituted under the *Public Service Act* 1922–19 for the State of (here insert name of State)” and inserting in their stead the words “a Promotions Appeal Committee constituted under the *Public Service Act* 1922–19 ”.

Sixth
Schedule.

5. The amendments made by paragraph (c) of section 3 of this Act apply only in relation to appeals in respect of promotions notified on or after a date to be fixed by Proclamation as the proclaimed date for the purposes of this section.

Application of
amendments.

Saving.

6. Notwithstanding the amendments made by this Act—

- (a) the regulations in force under the Principal Act immediately before the commencement of this Act with respect to the constitution of Promotions Appeal Committees continue in force in relation to Promotions Appeal Committees other than Central Promotions Appeal Committees as if made under the Principal Act as amended by this Act; and**
 - (b) a Promotions Appeal Committee constituted under the Principal Act immediately before the commencement of this Act continues in existence as if constituted under the Principal Act as amended by this Act.**
-