

PUBLIC SERVICE ACTS AMENDMENT ACT 1975

No. 40 of 1975

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PUBLIC SERVICE ACTS AMENDMENT ACT 1975

No. 40 of 1975

An Act relating to the Australian Public Service.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the *Public Service Acts Amendment Act 1975*.¹
- Commence-
ment. 2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹
- (2) Sections 5 and 14 shall come into operation on such dates as are respectively fixed by Proclamation.

PART II—ADMENDMENTS OF THE PUBLIC SERVICE ACT

- Interpret-
ation and
citation. 3. (1) In this Part, the *Public Service Act 1922-1974*² is referred to as the Principal Act.
- (2) The Principal Act, as amended by this Act, may be cited as the *Public Service Act 1922-1975*.
4. Section 13 of the Principal Act is repealed and the following section is substituted:—
- Remuner-
ation and
allowances
for members
of the Board. “13. (1) A member of the Board shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid remuneration at the rate that was applicable immediately before the commencement of this section.
- “(2) A member of the Board shall be paid such allowances as are prescribed.
- “(3) This section has effect subject to the *Remuneration Tribunals Act 1973-1974*.”.
- Composition
of Divisions. 5. Section 24 of the Principal Act is amended by omitting sub-section (1A).

6. Section 25 of the Principal Act is amended by inserting after sub-section (4A) the following sub-sections:—

Permanent
Heads.

“(4B) The regulations may—

- (a) specify an office established by an Ordinance of an internal Territory as an office to which sub-section (4C) applies; and
- (b) specify a branch or part of the Service in relation to which the holder of that office is to have the powers of a Permanent Head under this Act.

“(4C) The person holding, or acting in, an office specified in the regulations as an office to which this sub-section applies has all the powers of, or exercisable by, a Permanent Head under this Act so far as those powers relate to the branch or part of the Service specified in the regulations in relation to the holder of that office as if that branch or part of the Service were a separate Department.”.

7. Section 30 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:—

Salaries of
officers.

“(1) An officer of the First Division who holds an office in the Service shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid remuneration at the rate that was applicable immediately before the commencement of this sub-section.

“(1A) The operation of this Act, in its application to officers of the First Division who hold offices in the Service, is subject to the *Remuneration Tribunals Act 1973-1974*.”.

8. Section 46 of the Principal Act is amended—

Recruitment.

- (a) by omitting from paragraph (a) in sub-section (2) the words “classes of offices” and substituting the words “office or offices”; and
- (b) by inserting after sub-section (2) the following sub-sections:—

“(2A) Where the Board has, by a notice under sub-section (1), invited applications for appointment to the Service in respect of a specified office or of offices included in a specified class of offices but that office has, or the offices included in that class of offices have, ceased to exist, the Board may determine that the notice is to have effect as if it had related to another office, or another class of offices, as the case may be, and, if the Board does so, sub-section (3) does not prevent the appointment to the Service, in respect of that other office, or of an office included in that other class of offices, of a person who applied for appointment to the Service before the determination was made, or applies for appointment to the Service after the determination is made, in pursuance of that notice.

“(2B) The Board shall cause a determination under sub-section (2A) to be published in the *Gazette*.”.

9. After section 50 of the Principal Act the following section is inserted:—

Abolition of
Departments.

“50A. (1) Where—

- (a) a vacancy exists in an office in a Department (in this section referred to as the relevant office); and
- (b) the Board is satisfied that the duties of the relevant office are substantially the same as the duties of an office that existed in another Department immediately before the abolition of that other Department (in this section referred to as the former Department),

the Board may, after it has obtained a report from the Permanent Head of the first-mentioned Department, by determination published in the *Gazette*, determine that a promotion of an officer to fill a vacancy in that office in the former Department, being a promotion that was uncompleted immediately before the abolition of the former Department, shall have effect as if that Permanent Head had promoted the officer to fill the vacancy in the relevant office.

“(2) The Board, in a determination made under sub-section (1) in respect of the promotion of an officer to fill a vacancy in an office in a former Department, shall, if the time within which an appeal against the promotion had not expired before the abolition of the former Department, or may, in any other case, extend the time within which appeals may be made against the promotion of the officer until the expiration of 21 days after the date of publication of the determination in the *Gazette*.

“(3) Where the Board makes a determination under sub-section (1) in respect of the promotion of an officer to fill a vacancy in an office in a former Department, section 50 applies in accordance with sub-section (4) of this section to and in relation to the promotion as if the officer had, on the day on which he was so promoted, been promoted to fill the vacancy in the relevant office.

“(4) For the purposes of this section, and in the application of section 50 in relation to a promotion referred to in a determination made under sub-section (1)—

- (a) any action taken in connexion with the promotion before the abolition of the former Department has effect as if it had been taken in relation to the promotion of the officer to fill the vacancy in the relevant office;
- (b) if the Board extended the time within which appeals might be made against the promotion of the officer—any appeal against the promotion of the officer to the relevant office made before the expiration of that time shall be deemed to have been made

within the time prescribed for the purposes of sub-section (6) of section 50; and

(c) accordingly as the circumstances require—

- (i) the Department in which the relevant office exists, and the relevant office, shall be deemed to have been in existence, and the relevant office shall be deemed to have been vacant;
- (ii) the relevant office shall be deemed to have been in existence and to have been vacant; or
- (iii) the relevant office shall be deemed to have been vacant, on the day on which the officer was promoted to fill the vacancy in the office in the former Department.

“(5) For the purposes of this section, the promotion of an officer to fill a vacancy in an office in a Department shall be taken to be uncompleted if it has not been confirmed or cancelled.

“(6) Where the Board has abolished all the offices in a branch or other part of a Department and created offices in another Department the duties of which are substantially the same as the duties of all or any of the offices that were abolished, this section applies as if that branch or other part of that first-mentioned Department were a separate Department and the abolition of the offices in that branch or other part of that Department were the abolition of that separate Department.”.

10. Section 55 of the Principal Act is amended—

Offences.

- (a) by omitting from sub-section (5A) the words “and shall receive such remuneration, by way of fees, as the Board of Commissioners determines”; and
- (b) by inserting after sub-section (5A) the following sub-sections:—

“(5B) Where the Chairman of an Appeal Board is not an officer of the Service, he shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid remuneration at the rate that was applicable immediately before the commencement of this sub-section.

“(5C) Where the Chairman of an Appeal Board is not an officer of the Service, he shall be paid such allowances as are prescribed.

“(5D) Sub-sections (5B) and (5C) have effect subject to the *Remuneration Tribunals Act 1973-1974*.”.

11. Section 56 of the Principal Act is amended by adding at the end thereof the following sub-sections:—

Offences of officers of First or Second Division.

“(4) Where a member of a Board of Inquiry is not an officer of the Service, he shall be paid such remuneration as is determined by the

Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(5) Where a member of a Board of Inquiry is not an officer of the Service, he shall be paid such allowances as are prescribed.

“(6) Sub-sections (4) and (5) have effect subject to the *Remuneration Tribunals Act 1973-1974*.”.

12. After Division 9E of the Principal Act the following Division is inserted:—

“Division 9F—Transfer of other Persons to the Service

Definitions.

“81ZM. (1) In this Division, unless the contrary intention appears—
 ‘Australian authority’ means an authority established or constituted for a public purpose by or under a law of Australia or of an internal Territory;
 ‘authority of a State’ includes a Minister of the Crown of a State;
 ‘declared class of persons’ means a class of persons specified in a declaration under sub-section (1) or (2) of section 81ZN that is in force.

“(2) For the purposes of this Division, a person who, with the authority of the Board given under sub-section (1) of section 81ZR, is employed in the Service shall be taken to be engaged under this Division.

Application.

“81ZN. (1) Where a Department or an Australian authority is exercising, or is authorized to exercise, a function, the Governor-General may, by declaration published in the *Gazette*, declare that this Division shall apply in relation to a class of persons specified in the declaration, being persons who are performing, or have been performing, duties concerned with the exercise of a similar function by a State or an authority of a State or by any other authority (including an Australian authority), body or person and are not employed under this Act.

“(2) The Governor-General may, by declaration published in the *Gazette*, declare that the Division shall apply in relation to a class of persons specified in the declaration, being persons who are employed by an Australian authority otherwise than under this Act.

Notice in writing to elect to be employed in the Service.

“81ZP. (1) The Board may, by notice in writing addressed to a person who is included in a declared class of persons, inform the person—
 (a) that he may elect to be appointed to the Service; or
 (b) that he may elect to be employed in the Service in a specified Department.

“(2) An election in pursuance of a notice given under sub-section (1) shall be made in writing addressed to the Board and shall be

delivered to the Secretary of the Board within the period of 21 days after the date of the notice or within such further period as the Board, within that period of 21 days, allows.

“(3) A notice under sub-section (1) shall include particulars of the proposed appointment or employment.

“81ZQ. Where a person elects, in pursuance of a notice given under section 81ZP, to be appointed to the Service, the Board may (notwithstanding any other provision of this Act except paragraphs (a) and (c) of section 34) appoint him accordingly.

Appointment
to the
Service.

“81ZR. (1) Where a person elects, in pursuance of a notice given under section 81ZP, to be employed in the Service in the Department specified in that notice, the Board may authorize his employment accordingly.

Temporary
employment
in the
Service.

“(2) Sub-sections (1) and (2) of section 82 do not apply in relation to any employment authorized by the Board under sub-section (1) of this section.

“81ZS. (1) Subject to this section and to sections 20, 55, 56, 62 and 67, and to any law providing for a reduction in the remuneration payable to officers of the Service generally, the rate of remuneration of an officer appointed, or of an employee engaged, under this Division shall, while he continues in the Service, be not less favourable than that to which, in the opinion of the Board, he would have been entitled in respect of the normal position that he occupied immediately before his appointment or engagement under this Division.

Rate of
remun-
eration.

“(2) Where, by virtue of sub-section (1), the remuneration to which a person is entitled would or might be increased by reason of an increment of salary in respect of the normal position that he occupied immediately before his appointment or engagement under this Division, his entitlement to the increase is subject to the provisions that, under sub-sections (4), (5) and (6) of section 31, apply to increments of salary referred to in sub-section (1) of section 31.

“(3) In this section ‘remuneration’ means salary or pay and includes such allowances as, in the opinion of the Board, should be regarded as having formed part of the salary or pay of the officer or employee in the position that he normally occupied immediately before his appointment or engagement under this Division.

“81ZT. Where the service in the Service of a person appointed or engaged under this Division is continuous with a continuous period of permanent or temporary employment, as the case may be, by the State, authority, body or person by whom he was employed immediately before he was appointed or engaged under this Division (including, in the case of a person who was employed by a State, any employment deemed

Prior service
to be
reckoned as
service in the
Service.

under the law of the State to have been continuous with that period of employment by the State), that continuous period of employment shall be reckoned, for the purposes of this Act, as service in the Service.

Accrued
recreation
leave.

“81ZU. A person appointed or engaged under this Division preserves his eligibility for the grant of leave of absence for recreation that had accrued immediately prior to his being so appointed or engaged.

Special
conditions of
employment.

“81ZV. (1) For the purpose of ensuring that conditions of employment of a person appointed or engaged under this Division are, as far as possible, as favourable as those that, in the opinion of the Board, he enjoyed immediately before he was so appointed or engaged, the Board may, notwithstanding anything in any other provision of this Act or in any other law—

(a) determine any conditions of employment that are to apply to him; or

(b) determine that an allowance is payable to him as compensation, or both.

“(2) In this section, ‘conditions of employment’ includes conditions relating to salary, pay or allowances, but does not include conditions relating to superannuation.”.

Regulations.

13. (1) Section 97 of the Principal Act is amended by inserting after paragraph (j) of sub-section (1) the following paragraph:—

“(ja) making provision with respect to the welfare of officers and employees, including provision in accordance with which payments may be made to officers, employees and other persons in connexion with the welfare of officers and employees;”.

(2) Regulations purporting to be in force under the Principal Act immediately before the commencement of this section shall be deemed to be, and to have been, as valid and effectual as they would have been if the amendments of the Principal Act effected by this section had come into operation immediately before the regulations were made.

Schedules.

14. Schedules 2 and 3 of the Principal Act are repealed and the Schedules set out in Schedule 1 of this Act are substituted.

PART III—AMENDMENTS OF THE OFFICERS’ RIGHTS DECLARATION ACT

Interpretation and
citation.

15. (1) In this Part, the *Officers’ Rights Declaration Act 1928-1973*³ is referred to as the Principal Act.

(2) The Principal Act, as amended by this Act, may be cited as the *Officers’ Rights Declaration Act 1928-1975*.

16. Section 3 of the Principal Act is amended by inserting after the words “that Schedule” the words “, or by a prescribed Territory law”. Application of Act.

17. Section 4 of the Principal Act is amended—

Definitions.

- (a) by omitting the definition of “Commonwealth authority” and substituting the following definition:—

“ ‘authority’ includes a body corporate that is incorporated for a public purpose; ”;

- (b) by omitting from the definition of “employment” the words “Commonwealth authority” and substituting the words “public authority”;

- (c) by omitting the definition of “officer” and substituting the following definitions:—

“ ‘officer’ means an officer employed as, or as a member of, or by, a public authority, who, immediately prior to his employment, was an officer of the Australian Public Service;

‘prescribed Territory law’ means a law of a Territory specified in regulations under this Act as a prescribed Territory law for the purposes of this Act;

‘public authority’ means an authority which has been created (including an officer whose office has been created) by an Act specified in the Schedule or by a prescribed Territory law; ”; and

- (d) by omitting from the definition of “the Minister” the words “Commonwealth authority” and substituting the words “public authority”.

18. Section 5 of the Principal Act is amended—

Rights preserved or retained.

- (a) by inserting in sub-section (1), after the words “that Schedule”, the words “, or by a prescribed Territory law, ”;

- (b) by omitting from sub-section (1) the words “Public Service of the Commonwealth” and substituting the words “Australian Public Service”;

- (c) by omitting from sub-section (1) the words “Commonwealth authority” (wherever occurring) and substituting the words “public authority”; and

- (d) by omitting sub-section (2) and substituting the following sub-sections:—

“(2) In the case of an officer employed by a public authority, the rights declared by this section shall, subject to sub-section (3), be rights against that authority.

“(3) If the officer does not elect as provided in sub-section (1), the public authority shall be liable to repay to Australia part of any contributions made by Australia in respect of superannuation allowance to the officer, being a part that is calculated

according to the proportion which the period of the officer's employment as, or as a member of, or by, the public authority bears to the total period of employment of the officer by Australia and as, or as a member of, or by, the public authority."

Officers to be
unattached
during
employment.

19. Section 6 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words "Commonwealth authority" and substituting the words "public authority";
- (b) by omitting from sub-section (1) the words "Public Service of the Commonwealth" and substituting the words "Australian Public Service"; and
- (c) by omitting from sub-section (2) the words "Public Service of the Commonwealth" and substituting the words "Australian Public Service".

Formal
amendments.

20. The Principal Act is amended as set out in Schedule 2.

SCHEDULE 1

Section 14

SCHEDULES TO BE INSERTED IN THE PUBLIC SERVICE ACT

"SCHEDULE 2

Sections 7 and 10

Departments

The Department of the Senate
 The Department of the House of Representatives
 The Department of the Parliamentary Library
 The Department of the Parliamentary Reporting Staff
 The Joint House Department
 The Department of Aboriginal Affairs
 The Department of Agriculture
 The Attorney-General's Department
 The Department of the Capital Territory
 The Department of Customs and Excise
 The Department of Defence
 The Department of Education
 The Department of the Environment and Conservation
 The Department of Foreign Affairs
 The Department of Health
 The Department of Housing and Construction
 The Department of Labor and Immigration
 The Department of Manufacturing Industry
 The Department of the Media

SCHEDULE 1—continued

The Department of Minerals and Energy
The Department of Northern Development
The Department of the Northern Territory
The Department of Overseas Trade
The Postmaster-General's Department
The Department of the Prime Minister and Cabinet
The Department of Repatriation and Compensation
The Department of Science
The Department of Services and Property
The Department of Social Security
The Department of the Special Minister of State
The Department of Tourism and Recreation
The Department of Transport
The Department of the Treasury
The Department of Urban and Regional Development

“SCHEDULE 3

Section 25

Permanent Heads of Departments

The Clerk of the Senate
The Clerk of the House of Representatives
The Parliamentary Librarian
The Principal Parliamentary Reporter
The Secretary of the Joint House Department
The Secretary to the Department of Aboriginal Affairs
The Secretary to the Department of Agriculture
The Secretary to the Attorney-General's Department
The Secretary to the Department of the Capital Territory
The Comptroller-General of Customs
The Secretary to the Department of Defence
The Secretary to the Department of Education
The Secretary to the Department of the Environment and Conservation
The Secretary to the Department of Foreign Affairs
The Director-General of Health
The Secretary to the Department of Housing and Construction and Director-General of Works
The Secretary to the Department of Labor and Immigration
The Secretary to the Department of Manufacturing Industry
The Secretary to the Department of the Media
The Secretary to the Department of Minerals and Energy
The Secretary to the Department of Northern Development
The Secretary to the Department of the Northern Territory
The Secretary to the Department of Overseas Trade
The Director-General of Posts and Telegraphs
The Secretary to the Department of the Prime Minister and Cabinet
The Secretary to the Department of Repatriation and Compensation
The Secretary to the Department of Science

SCHEDULE 1—continued

The Secretary to the Department of Services and Property
 The Director-General of Social Services
 The Secretary to the Department of the Special Minister of State
 The Secretary to the Department of Tourism and Recreation
 The Secretary to the Department of Transport
 The Secretary to the Department of the Treasury
 The Secretary to the Department of Urban and Regional Development”.

SCHEDULE 2

Section 20

FORMAL AMENDMENTS OF THE OFFICERS' RIGHTS DECLARATION ACT

The Principal Act is amended as set out in the following table:—

Provision	Amendment
Preamble	Omit “the Commonwealth”, substitute “Australia”.
Section 3	Omit “to this Act”.
Section 5 (1)	Omit “to this Act”.

NOTES

1. Act No. 40, 1975; assented to 23 May 1975.
2. 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 75, 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; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; and No. 59, 1974.
3. Act No. 16, 1928, as amended by No. 19, 1933; No. 86, 1940; No. 1, 1953; No. 15, 1959; No. 6, 1968; No. 13, 1969; and No. 216, 1973 (as amended by No. 20, 1974).