

POSTAL SERVICES ACT 1975

No. 54 of 1975

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POSTAL SERVICES ACT 1975

No. 54 of 1975

An Act relating to the Provision of Postal Services within Australia and between Australia and Places outside Australia.

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

PART I—PRELIMINARY

1. This Act may be cited as the *Postal Services Act 1975*.¹

Short title.

2. (1) Part I, section 5, Part IV, Division 1 of Part V and sections 78 and 101 of this Act shall come into operation on the day on which this Act receives the Royal Assent.¹

Commencement.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

3. (1) In this Act, unless the contrary intention appears—

Interpretation.

“approved bank” means a bank approved by the Treasurer for the purposes of the provision in which the expression occurs;

“article” includes a substance or thing;

“Australia”, when used in a geographical sense, includes the prescribed external Territories;

“authorized person” means a person authorized by the Commission for the purpose of the provision in which the expression occurs;

“Chairman” means the Chairman of the Commission;

“Chief General Manager” means the Chief General Manager of the Commission;

“commencing date” means the date fixed by Proclamation under sub-section 2 (2);

“Commission” means the Australian Postal Commission established by this Act;

“Commissioner” means the Managing Director or another Commissioner holding office under section 25;

“convention” means a convention to which Australia is a party or an agreement or arrangement between Australia and another country or other countries;

“Deputy Chairman” means the Deputy Chairman of the Commission;

- “employee” means a person engaged by the Commission as a temporary employee under section 45;
- “mail” includes a package, receptacle or covering in which postal articles in course of transmission by post are conveyed, whether the package, receptacle or covering does or does not contain any postal articles;
- “Managing Director” means the Managing Director of the Commission;
- “officer” means a person who is appointed to the Service under section 42 or deemed to have been appointed to the Service under Part IV of the Transitional Provisions Act;
- “organization” means an organization registered under the *Conciliation and Arbitration Act 1904-1974*;
- “part-time Commissioner” means a Commissioner other than the Managing Director;
- “postage”, in relation to the transmission of a postal article, means the amount payable for transmission of the postal article by post, including any special charge or additional fee payable for a special service required in connexion with the transmission of the article;
- “postal article” means an article transmissible by post or an article not transmissible by post but transmissible by the courier service;
- “prescribed external Territory” means an external Territory other than Papua New Guinea, Norfolk Island or the Territory of Christmas Island;
- “registered publication” means a copy of a number of a publication registered for transmission by post in accordance with the By-laws;
- “Service” means the Australian Postal Commission Service established by section 41;
- “Transitional Provisions Act” means the *Postal and Telecommunications Commissions (Transitional Provisions) Act 1975*.
- (2) In this Act, unless the contrary intention appears—
- (a) a reference to an office of the Commission is a reference to an office at which postal articles may be posted or from which postal articles transmitted through the post may be delivered to an addressee;
- (b) a reference to a receptacle or box for the reception of postal articles erected by the Commission includes a reference to a receptacle or box for the reception of postal articles vested in the Commission under section 29 of the Transitional Provisions Act;
- (c) a reference to the transmission of moneys through the post is a reference to the service provided by the Commission for the purpose of enabling persons to pay money to the Commission for payment to another person;

- (d) a reference to the transmission of a postal article by ordinary post is a reference to the transmission of the article in such manner as will not involve the provision, in relation to the transmission of the article, of a service for which a special charge or additional fee is payable under the provisions of this Act; and
- (e) a reference to the original position—
 - (i) of a person who has been dismissed under section 61, 64 or 65 or is to be deemed, under section 68, to have resigned; or
 - (ii) of an officer who has been transferred to another position under section 61, 64 or 65,is a reference to the position held by that person or officer immediately before the dismissal, resignation or transfer, as the case may be, or, if the person or officer was then performing the duties of another position to which he had been temporarily transferred under section 62, to the position held by him immediately before that temporary transfer.

4. This Act extends to the prescribed external Territories.

Extension of
Act to
Territories.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUSTRALIAN POSTAL COMMISSION

5. There is established by this Act a Commission by the name of the Australian Postal Commission.

Establish-
ment of
Commission.

6. The functions of the Commission are—

Functions of
Commission.

- (a) to operate postal services for the transmission of postal articles within Australia and between Australia and places outside Australia;
- (b) to operate such other services as the Commission is authorized by this Act to operate;
- (c) to provide, at the request of the Australian Government, technical assistance outside Australia in relation to the planning and operation of postal services in countries outside Australia and the prescribed external Territories; and
- (d) to do anything incidental or conducive to the performance of any of the preceding functions.

7. (1) The Commission shall perform its functions in such a manner as will best meet the social, industrial and commercial needs of the Australian people for postal services and shall, so far as it is, in its opinion, reasonably practicable to do so, make its postal services available throughout Australia for all people who reasonably require those services.

Duties of
Commission.

(2) In performing its functions in accordance with sub-section (1), the Commission—

- (a) shall comply with any directions given to it under section 8; and
- (b) shall have regard to—
 - (i) the desirability of improving and extending its postal services in the light of developments in the field of communications;
 - (ii) the need to operate its services as efficiently and economically as practicable; and
 - (iii) the special needs for postal services of Australian people who reside or carry on business outside the cities.

(3) Nothing in this section shall be taken—

- (a) to prevent the Commission from interrupting, suspending or restricting, in the case of emergency, a service provided by it; or
- (b) to impose on the Commission a duty that is enforceable by proceedings in a court.

(4) It is the duty of the Commission, in performing its functions, to comply with the provisions of any Convention to the extent that it imposes obligations on Australia in relation to matters within the functions of the Commission.

Minister may
give directions to the
Commission.

8. (1) The Minister may, after consultation with the Commission, give to the Commission, in writing, such directions, with respect to the performance of its functions and the exercise of its powers, as appear to the Minister to be necessary in the public interest.

(2) Where the Minister gives a direction to the Commission under sub-section (1), the Minister shall cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days after the direction is so given.

(3) Sub-section (1) does not authorize the Minister to give a direction with respect to rates of postage or fees referred to in section 18.

Powers
of the
Commission.

9. (1) The Commission may do, in Australia or elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to, the performance of its functions under this Act.

(2) The generality of sub-section (1) shall not be taken to be limited by any other provision of this Act conferring a power on the Commission.

(3) The Commission has power, for or in connexion with the performance of its functions—

- (a) to purchase land;
- (b) to take land on lease;
- (c) to take easements over land;

- (d) to sell, or otherwise dispose of, land vested in the Commission but not required for the purposes of the Commission;
- (e) to lease land vested in the Commission the use of which is not for the time being required by the Commission;
- (f) to release any easement over land; and
- (g) to do anything incidental to any of the powers specified in the preceding paragraphs of this sub-section.

(4) The Commission has power, in connexion with the performance of its functions to provide services for the transmission of money within Australia and between Australia and places outside Australia.

10. (1) The Commission may operate a courier service, being a service that provides for the collection, at the request of a person using the service, of an article, being an article transmissible by courier service, from a place in Australia specified by or on behalf of the person and the conveyance and delivery of the article to another place in Australia that is so specified. Courier service.

(2) The courier service so established may, subject to and in accordance with the By-laws, provide for the collection from an office of the Commission of a postal article transmitted by post to the office of the Commission and the conveyance and delivery of the article to a place other than an office of the Commission, and for the collection of a postal article from a place other than an office of the Commission and the conveyance and delivery of the article to an office of the Commission and the lodging of the article (on behalf of the person using the service) for transmission by post to another place.

(3) In this section, “article transmissible by courier service” means an article transmissible by post and any other article that, under the By-laws, is transmissible by courier service.

11. (1) The Commission may erect and maintain receptacles or boxes for the reception, for transmission by post, of postal articles in any public road, street or highway or in any other public place. Erection of postal boxes.

(2) The Commission shall keep in good order, and may, at any time demolish or remove, any receptacle or box erected by it for the reception of postal articles.

12. The Commission may make arrangements with a Minister of State acting on behalf of Australia or the Administration of a Territory, with a Minister of State acting on behalf of a State, or with an authority of Australia or of a State— Commission may act as agent, &c.

- (a) for the doing of any act or thing by the Commission on behalf of Australia, the Administration of that Territory, that State or that authority, as the case may be, being an act or thing that can conveniently be done in conjunction with the performance of the functions of the Commission; or

- (b) for the doing by a Department of State, the Administration of that Territory, a Department of that State or that authority, as the case may be, on behalf of the Commission of any act or thing that the Commission is authorized to do under this Act.

PART III—POSTAL SERVICES

Division 1—Postage

Issue and
sale of
postage
stamps.

13. The Commission shall issue and sell postage stamps indicating such amounts of postage as the Commission deems appropriate.

Payment of
postage.

14. (1) Payment of postage in respect of the transmission of a postal article may be made—

- (a) in circumstances prescribed by the By-laws—in money; or
- (b) except as otherwise provided by the By-laws—by affixing to the article uncanceled postage stamps issued by the Commission and indicating an amount of postage equal to or greater than the amount of the postage payable in respect of the transmission of the article,

but not otherwise.

(2) An envelope, letter-card, aerogramme or other article on which the Commission has caused to be impressed or printed a representation of, or a design resembling, a postage stamp indicating an amount of postage shall be deemed to have affixed to it a postage stamp issued by the Commission indicating that amount of postage.

(3) Where an envelope, letter-card, aerogramme or other article has impressed or printed on it a representation of, or a design resembling, a postage stamp of a kind issued by the Commission, it shall, for all purposes, be presumed, unless the contrary is established, that the Commission caused the representation or design to be so impressed or printed on it.

(4) Where payment of postage may be made in money, the By-laws may prescribe conditions to which that payment is subject.

(5) The following postal articles may be transmitted by the Commission by ordinary post free of charge:—

- (a) a petition or address to the Governor-General or to the Governor of a State, being a petition or address the weight of which does not exceed 500 grams and which is posted without a cover or in a cover that is open at the ends or the sides;
- (b) a Braille postal article, a Moon postal article or a postal article for the use of the blind of a kind prescribed by the regulations, being an article posted as provided in the regulations; and

- (c) a postal article issued by the Commission to persons using the postal services provided by the Commission for purposes connected with those services (including an article notifying a change of address), being an article marked in a manner determined by the Commission.

(6) A postal article, being—

- (a) official correspondence from the Commission relating to the postal services provided by the Commission; or
- (b) a postal article received by post from outside Australia (not being a postal article in respect of which fees are required to be collected by virtue of a convention or of a provision of the By-laws),

may be transmitted by the Commission by post free of charge.

15. (1) The Commission may make arrangements with a person under which the postage payable in respect of postal articles to which the arrangement applies posted by that person may be paid by that person after the articles have been posted.

When postage need not be pre-paid.

(2) The Commission may make an arrangement with a person under which the postage payable in respect of postal articles to which the arrangement applies posted by another person is to be paid by that first-mentioned person after the articles have been posted.

(3) Postal articles to which an arrangement under this section applies may be transmitted and delivered before the postage is paid.

16. (1) Where the postage is not fully pre-paid on a postal article posted for delivery in Australia, the Commission is entitled to be paid, as a condition of delivery, such fee, in addition to the amount of the postage or of the deficient postage payable in respect of the transmission of the article, as is payable in accordance with a determination made by the Commission.

Postal articles on which postage insufficiently pre-paid.

(2) For the purposes of this section, where the postage is paid in full in respect of a postal article in accordance with an arrangement of a kind referred to in section 15 that is applicable to the article, the postage in respect of that postal article shall be deemed to have been fully pre-paid.

17. A postage stamp, and any document issued by the Commission in respect of the transmission of moneys through the post, shall each be deemed to be a valuable security for the purposes of any law with respect to larceny.

Postage stamps to be valuable securities.

Division 2—Postal Charges

Charges for postage and other charges.

18. (1) The Commission may, from time to time, make, with the approval of the Minister, determinations fixing or varying the rates of postage for the transmission within Australia by ordinary post of—

- (a) standard postal articles; and
- (b) registered publications.

(2) The Commission may, from time to time, make determinations fixing or varying—

- (a) rates of postage for the transmission of postal articles to which sub-section (1) is inapplicable;
- (b) fees for the provision, in relation to the transmission of postal articles by post, of any special services; and
- (c) fees for any other services that the Commission provides under this Act.

(3) An application to the Minister for his approval of a determination proposed to be made by the Commission under sub-section (1)—

- (a) shall be made to the Minister in writing;
- (b) shall specify the date as from which the determination is, if approved by the Minister, intended to operate; and
- (c) shall also specify—
 - (i) the proportion of the amount ascertained in accordance with the formula specified in paragraph 76 (1) (b) in respect of the financial year in which the date so specified occurs that the Commission is planning to provide out of revenues of the Commission for expenditure by way of capital expenditure; and
 - (ii) the amount estimated by the Commission to be the amount of revenue that the Commission will receive in respect of the financial year referred to in sub-paragraph (i),

if the determination is made and any other determination that the Commission proposes to make under sub-section (2) is also made.

(4) The Minister shall furnish his decision with respect to an application referred to in sub-section (3) to the Commission in writing.

(5) Where an application has been made to the Minister for approval of a determination that the Commission proposes to make under sub-section (1), the Minister may request the Commission, in writing, to furnish to him specified information that is, in his opinion, relevant to the fixing or varying of the rates of postage to which the determination relates, and the Commission shall comply with the request to the extent to which it is practicable to do so and as soon as practicable after receipt of the request.

(6) The Commission shall cause particulars of rates of postage and other charges determined by it under this section to be published in the *Gazette*.

(7) For the purpose of this section, a postal article is a standard postal article if—

- (a) the article does not weigh more than 500 grams;
- (b) the thickness of the article does not exceed 5 millimetres; and
- (c) the other 2 dimensions of the article form an oblong—
 - (i) the shorter of whose sides is not less than 88 millimetres and not more than 122 millimetres in length;
 - (ii) the longer of whose sides is not less than 138 millimetres and not more than 237 millimetres in length; and
 - (iii) the respective lengths of whose adjacent sides are in the ratio of 1 to at least 1.414.

19. (1) This section applies to the Commission in respect of a financial year where— Reimbursement.

- (a) the Commission has submitted to the Minister for his approval a determination that it proposes to make under sub-section 18 (1) with a view to fulfilling the financial policy that it is pursuing in respect of that financial year, but the Minister has refused to grant his approval; and
- (b) subsequent to that refusal, the Commission—
 - (i) after having given consideration to any suggestions with respect to rates of postage made by the Minister when refusing to approve the determination referred to in paragraph (a); and
 - (ii) after having reconsidered the proposed expenditures of the Commission, the proportion specified in the application for the Minister's approval in accordance with sub-paragraph 18 (3) (c) (i) and all rates of postage and fees charged by the Commission with a view to formulating a financial policy in respect of that year and carrying out that policy otherwise than by charging the rates of postage proposed in the determination referred to in paragraph (a),

has submitted to the Minister an application in accordance with sub-section 18 (3) for his approval of another determination (in this section referred to as the second determination), whether or not differing from the original proposed determination, that the Commission proposes to make under sub-section 18 (1), but the Minister has refused to grant his approval.

(2) Where, after the end of a financial year in respect of which this section applies to the Commission, the Minister is satisfied that the Commission has complied with sub-section 76 (2) in respect of the year and

that, for reasons related, either in whole or in part, to his having refused to approve under sub-section 18 (1) the second determination, the revenue that the Commission would have required in respect of the financial year for the purpose of enabling it—

- (a) to have met, out of that revenue, all expenditure, and provision for expenditure, of the Commission in respect of that year properly chargeable to the revenue; and
- (b) to have provided, for expenditure by the Commission by way of capital expenditure, a sum equal to the proportion specified in the application made to the Minister in respect of the second determination in pursuance of sub-paragraph 18 (3) (c) (i) of the amount ascertained in respect of that financial year in accordance with the formula specified in paragraph 76 (1) (b) or equal to one-half of the amount so ascertained, whichever is the less,

exceeds the revenue of the Commission in respect of that year, the Commission is entitled to be paid by Australia—

- (c) an amount equal to the excess;
- (d) an amount equal to the amount by which the revenue of the Commission in respect of that year was less than the amount specified in the application made to the Minister in respect of that second determination in pursuance of sub-paragraph 18 (3) (c) (ii); or
- (e) an amount equal to the amount by which the revenue of the Commission in respect of that year is less than the revenue that, in the opinion of the Minister, the Commission would have received in respect of that year if that second determination had been approved by the Minister and made by the Commission,

whichever is the least.

(3) Where the Minister, when refusing to approve the second determination in respect of a financial year, notifies the Commission the rates of postage that he would be prepared to approve in respect of that year but the Commission does not make a determination under sub-section 18 (1) fixing or varying the rates of postage accordingly, the Commission is not entitled to be paid an amount by Australia under sub-section (2) of this section in respect of that financial year.

(4) The Minister may, when notifying the Commission the rates of postage that he would be prepared to approve in respect of a year, specify any concessional rates that should, in his opinion, be provided for persons included in a specified class of persons.

(5) The Treasurer may, out of moneys appropriated by the Parliament for the purpose, make advances to the Commission, at such times as he thinks fit, of such amounts as he thinks fit on account of any amount that may become payable under sub-section (2).

(6) The Commission is liable to repay to Australia, upon demand by the Treasurer, the amount by which the total amounts (including advances) paid to the Commission under this section exceeds the total of those amounts that have become payable to the Commission under sub-section (2).

(7) The Commission shall cause particulars of any refusal by the Minister to approve a determination under sub-section 18 (1) to be set out in the report of the Commission under section 102 with respect to its operations during the year in which the approval was refused.

20. (1) Notwithstanding section 18, the Commission may enter into an agreement with any person to transmit postal articles of a particular kind on behalf of that person at rates of postage other than the rates applicable by virtue of determinations in force under section 18. Special charges.

(2) An agreement under sub-section (1) shall provide for postage in respect of the transmission of postal articles of a kind to which the agreement relates to be payable in accordance with specified rates of postage, being rates related to the number of postal articles of that kind posted in accordance with the agreement during a specified period.

(3) An agreement under sub-section (1) may be subject to conditions with respect to—

(a) the manner of packing, addressing and marking the articles;

(b) the manner and place of posting the articles; and

(c) the arrangement of the articles so as to facilitate their delivery,

and, in that event, the rates of postage provided for by the agreement do not apply in respect of the articles unless the person posting the articles complies with the conditions.

Division 3—Carriage of Mail

21. (1) The Commission may, by notice in writing addressed to the Australian National Railways Commission, the person having, under the law of a State, control of the government railways of the State or the owner or manager of any other railways in a State and served as prescribed by the regulations, require that scheduled trains under the control of that person be made available as specified in the notice for the carriage of mail on behalf of the Commission as provided in the notice and that the usual facilities for the receipt, transmission and delivery of mail so carried be provided on those trains. Carriage of mail by rail.

(2) Where mail is carried on trains in a State or Territory in compliance with a requirement under sub-section (1), the Commission is liable to pay, for the carriage of mail and the provision of the facilities, such annual sum as may be agreed upon or, in the default of agreement, as is determined by arbitration—

- (a) in the case of payment for carriage or for facilities provided on a railway vested in the Australian National Railways Commission—in accordance with the law of the Australian Capital Territory; or
- (b) in any other case—in accordance with the law of the State or Territory,

relating to the settlement of commercial disputes by arbitration.

(3) A reference in this section to a railway under the control of a person includes a reference to a bus service or other vehicular service operated by the person for the carriage of persons or goods in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals.

(4) A reference in this section to a train includes a reference to a bus or other vehicle operated in connexion with a service referred to in sub-section (3).

Vessels may
be required
to carry mail.

22. (1) Where a vessel—

- (a) is at, or is expected to arrive at, a port or place in Australia; and
- (b) is in the course of, or is expected to commence, a voyage to another port or place, whether within or outside Australia,

the Commission, or a person authorized by the Commission, may, by notice in writing addressed to the owner, agent or master of the vessel and served as prescribed by the regulations, require that the vessel be made available for the carriage of mail on the voyage from that first-mentioned port or place.

(2) Where—

- (a) a notice under sub-section (1) has been served with respect to the carriage of mail on board a vessel from a port or place;
- (b) mail for carriage on the vessel is delivered alongside the vessel at that port or place, or to any other part of that port or place that is agreed upon between the person who made the requirement and the person to whom the notice was addressed, not later than a time so agreed, or, if no time is so agreed, in sufficient time to permit the vessel, after taking the mail on board, to depart from that port or place not later than the intended time of departure at the time the requirement was made; and
- (c) the vessel departs from the port or place without taking on the mail so delivered,

the person on whom the notice was served is guilty of an offence against this section.

(3) Where mail is on board a vessel in compliance with a requirement under this section, whether within or outside Australia, the

owner, agent and master of the vessel are each guilty of an offence against this section if—

- (a) the mail is not kept in a secure dry place;
- (b) the mail is removed from the vessel, except—
 - (i) for delivery to the postal authority at the port or place to which the mail is consigned; or
 - (ii) in accordance with a direction under sub-section (4); or
- (c) when the vessel arrives at the port or place to which the mail is consigned, the mail is not delivered forthwith to the postal authority at that port or place.

(4) Where mail is on board a vessel in compliance with a requirement under this section, whether within or outside Australia, an authorized person may, by notice in writing served on the master of the vessel, direct the master to deliver up the mail, or deliver up such part of the mail as is specified in the direction, on demand, to the person specified in the direction and, if the master does not comply with the direction, he is guilty of an offence against this section.

(5) The penalty for an offence against this section is a fine not exceeding \$1,000.

(6) An offence against this section committed outside Australia may be prosecuted as if it were committed at the port or place at which the requirement under sub-section (1) was served and a court that would, if the offence had been so committed, have had jurisdiction in respect of the offence has jurisdiction in respect of the offence.

(7) Where mail is carried on board a vessel in compliance with this section, the owner of the vessel is entitled to payment, in respect of that carriage, in accordance with such rates as are agreed upon by the owner, agent or master, or in the default of agreement as may be determined by arbitration in accordance with the law of the State or Territory in which the requirement under sub-section (1) was served relating to the settlement of commercial disputes by arbitration.

(8) A reference in this section to the owner of a vessel shall, in relation to a vessel that is the subject of a charter-party by demise, be read as a reference to a charterer under the charter-party.

23. (1) Where a magistrate is satisfied, by information on oath or affirmation—

Detention of
vessel
required to
carry mail.

- (a) that a requirement has been made under section 22 with respect to the carriage of mail in a vessel from a port or place; and
- (b) that there are reasonable grounds for believing that the vessel may depart from that port or place without that mail on board,

the magistrate may grant a warrant authorizing an officer to board the vessel, with such persons as he thinks necessary to assist him, to detain the vessel until it is released in accordance with sub-section (3) and to

use, or authorize the use of, reasonable force to prevent any person from obstructing the carrying out of the foregoing.

(2) Where a vessel is being detained in accordance with a warrant issued under sub-section (1)—

- (a) the Commission or a person authorized by the Commission may, at any time, direct that the vessel be released from detention; and
- (b) a magistrate may, upon application made by the master of the vessel, direct that the vessel be released from detention if he is satisfied—
 - (i) that there is no longer any necessity for the carriage on board the vessel of any mail that is not already on board; or
 - (ii) that it is necessary for the safety of the vessel or of persons on board the vessel that the vessel leave the place at which it is detained.

(3) Notwithstanding any other provision of this section—

- (a) a period of detention of the vessel in pursuance of a warrant issued under sub-section (1) comes to an end, by force of this sub-section, at the expiration of 24 hours after the commencement of the period; and
- (b) when a vessel has been released from detention (whether by force of this sub-section or otherwise)—a further warrant under this section to detain the vessel shall not be issued under this section until the expiration of 24 hours after the time of release of the vessel.

(4) The Commission or a person acting in accordance with this section is not liable to pay damages or compensation to any person by reason of the detention of a vessel in accordance with a warrant granted under sub-section (1).

(5) Nothing in this section affects liability to pay harbour dues or any other charges in respect of a vessel for any period of detention under this section.

PART IV—CONSTITUTION AND MEETINGS OF THE COMMISSION

Constitution
of
Commission.

24. (1) The Commission—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

(3) The Commission is not subject to any requirement, obligation, liability, penalty or disability under a law of a State or Territory to which Australia is not subject.

- 25.** (1) The Commission shall consist of 7 Commissioners, namely— Composition
of
Commission.
- (a) the Managing Director;
 - (b) 1 Commissioner who shall be an officer of the Department administered by the Minister administering this Act;
 - (c) 1 Commissioner to represent officers and employees of the Commission; and
 - (d) 4 other Commissioners.

(2) The Commissioners shall be appointed by the Governor-General, the Managing Director being appointed as a full-time Commissioner and the other Commissioners being appointed as part-time Commissioners.

(3) The Governor-General shall, in appointing a Commissioner referred to in paragraph (1) (c), have regard to any advice with respect to the person to be appointed furnished by the Minister, after he has consulted with representatives of appropriate organizations representing officers and employees.

(4) The performance of the functions and the exercise of the powers of the Commission are not affected by reason of a vacancy or vacancies in the membership of the Commission.

(5) The By-laws may make provision for and in relation to the preservation of such rights as are specified in the By-laws by an officer who is appointed to be the Managing Director and for and in relation to the appointment of such an officer to a position in the Service upon the termination of his appointment under this section otherwise than upon the ground of his misconduct or of his having attained the age for retirement from the Service.

26. (1) Subject to sub-section (2), a Commissioner shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment. Period of
appoint-
ment.

(2) The Commissioner referred to in paragraph 25 (1) (b) holds office during the pleasure of the Governor-General.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Managing Director and a person shall not be appointed or re-appointed as the Managing Director for a period that extends beyond the date at which he will attain the age of 65 years.

Remuneration and allowances.

27. (1) A Commissioner, other than the Commissioner referred to in paragraph 25 (1) (b), 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 by the regulations.

(2) A Commissioner shall be paid such allowances as are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

Chairman and Deputy Chairman of Commission.

28. (1) The Governor-General shall appoint a Commissioner to be the Chairman of the Commission and another Commissioner to be the Deputy Chairman of the Commission.

(2) The Commissioner appointed to be the Chairman or the Deputy Chairman holds office as Chairman or Deputy Chairman until the expiration of his term of office as a Commissioner that is current or commences at the time of his appointment, but ceases to be the Chairman or the Deputy Chairman if he ceases to be a Commissioner or resigns his office of Chairman or Deputy Chairman in accordance with sub-section (3).

(3) The Commissioner appointed to be the Chairman or the Deputy Chairman may resign his office of Chairman or Deputy Chairman by writing under his hand delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

(4) A person is eligible to be re-appointed as the Chairman or the Deputy Chairman.

Leave of absence.

29. The Minister may grant leave of absence to a Commissioner upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation of Commissioner.

30. A Commissioner may resign his office by writing under his hand delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

Termination of appointments.

31. (1) The Governor-General may terminate the appointment of a Commissioner, other than the Commissioner referred to in paragraph 25 (1) (b), by reason of the misbehaviour, or the physical or mental incapacity, of the Commissioner.

(2) If a Commissioner, other than the Commissioner referred to in paragraph 25 (1) (b)—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

- (b) fails to comply with his obligations under sub-section (3);
- (c) being the Managing Director—
 - (i) engages in paid employment outside the duties of his office without the approval of the Minister; or
 - (ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months; or
- (d) being a part-time Commissioner—is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Commission,

the Governor-General shall terminate the appointment of the Commissioner.

(3) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, otherwise than as a member, and in common with other members, of an incorporated company which consists of not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(4) A disclosure under sub-section (3) shall be recorded in the minutes of the Commission, and the Commissioner—

- (a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to the matter; and
- (b) shall be disregarded for the purposes of constituting a quorum of the Commission for any such deliberation or decision.

(5) Sub-section (3) does not apply in relation to a matter relating to the provision of a postal service by the Commission for the Commissioner otherwise than in accordance with a special arrangement made under section 20.

32. (1) Where the Managing Director is, or is expected to be, absent from duty or from Australia or there is, or is expected to be, a vacancy in the office of Managing Director, the Minister may appoint a person to act as the Managing Director during the absence or vacancy. Acting Commissioner.

(2) A person appointed to act as the Managing Director in the event of a vacancy shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) Where a part-time Commissioner is appointed to act as the Managing Director, the office of the part-time Commissioner shall, for the purposes of sub-section (4), be deemed to be vacant.

(4) Where a part-time Commissioner is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the

Commission or there is a vacancy in the office of a part-time Commissioner, the Minister may appoint a person to act as a part-time Commissioner during that inability, or until the filling of the vacancy.

(5) The Minister shall not appoint a person to be an acting Commissioner in place of a Commissioner referred to in paragraph 25 (1) (b) or (c), or to fill a vacancy in the office of such a Commissioner unless the person would be eligible to be appointed to the office held or formerly held by that Commissioner.

(6) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(7) A person appointed under this section to act as the Managing Director or as an acting part-time Commissioner has all the powers and functions of the Managing Director, or of a part-time Commissioner, as the case may be.

(8) The validity of a decision of the Commission shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment of a person under this section had ceased to have effect.

Acting
Chairman
and Deputy
Chairman.

33. (1) Where the Chairman is absent from duty or from Australia or there is a vacancy in the office of Chairman, the Deputy Chairman shall act as the Chairman during the absence or until the filling of the vacancy.

(2) Where the Deputy Chairman is, or is expected to be, absent from duty or from Australia or there is a vacancy in the office of Deputy Chairman, the Minister may appoint another Commissioner to act as the Deputy Chairman during the period of the absence or until the filling of the vacancy.

(3) If the Deputy Chairman is at any time acting as the Chairman, his office of Deputy Chairman shall, during the period of his so acting, be deemed, for the purposes of sub-section (2), to be vacant.

(4) A reference in sub-section (1) to the Deputy Chairman includes a reference to a Commissioner acting as the Deputy Chairman in pursuance of an appointment under sub-section (2).

Meetings of
the
Commission.

34. (1) The Chairman shall convene such meetings of the Commission as he considers necessary for the performance of its functions.

(2) The Chairman shall, when requested by 4 or more Commissioners to do so, convene a meeting of the Commission.

(3) The Chairman shall preside at all meetings of the Commission at which he is present.

(4) If, at a meeting of the Commission, the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman shall preside at the meeting.

(5) If, at a meeting of the Commission, neither the Chairman nor Deputy Chairman is present, the Commissioners present shall appoint one of their number to preside at the meeting.

(6) A quorum at a meeting of the Commission is 4 Commissioners.

(7) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

(8) The Commissioner presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) A reference in this section to the Chairman or the Deputy Chairman includes a reference to a person acting as the Chairman or as the Deputy Chairman, as the case may be.

35. (1) The affairs of the Commission, to the extent determined by the Commission, shall be managed by the Managing Director.

Duties of the
Managing
Director.

(2) The Managing Director shall, in managing any of the affairs of the Commission, act in accordance with the policy of, and any directions given by, the Commission.

36. (1) The Commission may, by instrument under its seal, delegate to a Commissioner, to the Chief General Manager or to an officer or employee, either generally or otherwise as provided by the instrument of delegation, all or any of its powers under this Act (except this power of delegation).

Delegation.

(2) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Commission.

PART V—THE STAFF OF THE COMMISSION

Division 1—The Chief General Manager

37. (1) There shall be a Chief General Manager of the Commission, who shall be appointed by the Governor-General.

Chief
General
Manager.

(2) The Chief General Manager shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(3) A person who has attained the age of 65 years shall not be appointed as Chief General Manager and a person shall not be appointed or re-appointed as Chief General Manager for a period that extends beyond the date on which he will attain the age of 65 years.

(4) The Chief General Manager may resign his office by writing under his hand delivered to the Governor-General but the resignation does not have effect until it is accepted by the Governor-General.

(5) The Governor-General may terminate the appointment of the Chief General Manager by reason of the misbehaviour, or physical or mental incapacity, of the Chief General Manager.

(6) If the Chief General Manager—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Governor-General shall terminate his appointment.

(7) The Minister may grant leave of absence to the Chief General Manager upon such terms and conditions as to remuneration or otherwise as the Minister determines.

(8) The By-laws may make provision for and in relation to the preservation of such rights as are specified in the By-laws by an officer who is appointed to be Chief General Manager and for and in relation to the appointment of such an officer to a position in the Service upon the termination of his appointment under this section otherwise than upon the ground of his misconduct or of his having attained the age for retirement from the Service.

Remuner-
ation of
Chief
General
Manager.

38. (1) The Chief General Manager 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 by the regulations.

(2) The Chief General Manager shall be paid such allowances as are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

39. (1) Where the Chief General Manager is, or is expected to be, absent from duty or from Australia or has been appointed to act as the Managing Director or there is, or is expected to be, a vacancy in the office of Chief General Manager, the Minister may appoint a person to act as the Chief General Manager during the absence, while the Chief General Manager continues to act as the Managing Director or until the filling of the vacancy, as the case may be.

Acting Chief
General
Manager.

(2) A person appointed to act as the Chief General Manager in the event of a vacancy shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(4) Sub-sections 37 (4) and (7) apply in relation to a person appointed to act as the Chief General Manager in like manner as they apply in relation to the Chief General Manager.

(5) While the appointment of a person to act as the Chief General Manager is in force, he has, and may exercise and perform, all the powers and functions of the Chief General Manager.

(6) The validity of anything done by a person appointed to act as the Chief General Manager shall not be called into question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

40. (1) The Chief General Manager shall perform such duties as the Managing Director directs and, in the event of the absence or inability of the Managing Director and of the person appointed to act as the Managing Director if a person has been so appointed, or of a vacancy in the office of Managing Director, shall perform the duties of the Managing Director otherwise than at meetings of the Commission.

Duties of
Chief
General
Manager.

(2) For the purposes of sub-section (1), the office of Managing Director shall not be taken to be vacant while a person appointed to act as the Managing Director is performing the duties of the office.

(3) The Chief General Manager shall, in the performance of his duties, act in accordance with the policy of, and any directions given by, the Commission or the Managing Director.

Division 2—Establishment of the Australian Postal Commission Service

Establish-
ment of
Australian
Postal
Commission
Service.

41. (1) For the purpose of enabling the Commission to perform its functions under this Act, there is hereby established an Australian Postal Commission Service.

(2) The Service consists of the persons appointed as officers or employed as employees in accordance with this Part and of persons deemed to be appointed as officers under section 16 of the Transitional Provisions Act.

Division 3—Officers and Employees

Officers.

42. (1) The Commission may appoint as officers such number of persons as it thinks necessary for the purposes of this Act.

(2) A person shall not be appointed as an officer unless—

(a) the Commission is satisfied, after he has undergone a medical examination required by the Commission, as to his health and physical fitness;

(b) he possesses such educational qualifications, or meets such other requirements (if any), as are determined by the Commission; and

(c) the Commission is satisfied that he is a fit and proper person to be an officer.

(3) The Commission shall determine—

(a) the manner in which applications for appointment as officers are to be sought; and

(b) the manner of ascertaining the order in which offers of appointment will be made to persons who apply for appointment as officers to specified positions or to positions included in a specified class of positions.

(4) The Commission may, from time to time, for the purpose of this section—

(a) hold such examinations as it thinks fit;

(b) determine conditions of entry for any such examination; and

(c) appoint examiners for the purpose of any such examination.

(5) Officers shall perform duties as directed by the Commission or the Managing Director.

Appoint-
ments to be
on
probation.

43. (1) Unless the Commission, in a particular case, otherwise directs, the appointment of every officer shall be on probation for a period of 6 months commencing on the day on which the officer commences duties in pursuance of his appointment.

(2) A person appointed as an officer on probation remains a probationer until his appointment is confirmed or terminated in accordance with this section.

(3) The Commission may, at any time during the period of 6 months, terminate the appointment.

(4) As soon as practicable after the expiration of the period of 6 months, the Commission shall—

- (a) confirm the appointment;
- (b) terminate the appointment; or
- (c) direct that the probationer continue on probation for such further period (not being a period exceeding 6 months) as the Commission determines.

(5) Where the Commission directs that a probationer continue on probation for a further period, the Commission may confirm or terminate the appointment of the probationer at any time during that further period and, if it does not confirm or terminate the appointment before the expiration of that period, shall do so as soon as practicable after the expiration of that period.

(6) Where the appointment of a probationer is to be terminated, the Commission shall notify the probationer in writing of the reasons for the termination of the probation.

44. (1) Where the Commission is satisfied that—

(a) a person who was an officer—

- (i) resigned from the Service in order to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly for the Northern Territory or of a legislative or advisory body for another Territory prescribed by the regulations;
- (ii) was a candidate at the election; and
- (iii) failed to be elected; and

(b) the resignation took effect not earlier than 1 month before the date on which nominations for the election closed,

the Commission shall, upon application by that person within 2 months after the declaration of the result of the election, re-appoint him to the Service at a classification and salary equivalent to the classification and salary that he had immediately before the date upon which his resignation took effect.

(2) A person shall be re-appointed under this section without being required to undergo any medical examination and whether or not he possesses the appropriate educational qualifications or meets the appropriate requirements.

Re-appoint-
ment of
persons who
have
resigned
from the
Service to
become
candidates at
elections.

(3) A person shall be re-appointed under this section without probation.

(4) A person re-appointed under this section shall be deemed to have continued in the Service as if he had not resigned but had been on leave of absence without pay during the period from the day on which his resignation became effective to and including the day immediately preceding the day on which he was re-appointed.

(5) The period referred to in sub-section (4) shall, for all purposes, be deemed to form part of the officer's period of service.

Employees. **45.** (1) The Commission may engage persons as temporary employees.

(2) Persons engaged as temporary employees shall perform duties as directed by the Commission or the Managing Director.

(3) Where the Commission is satisfied that—

(a) a person who was temporarily employed by the Commission—

(i) resigned from that employment in order to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly for the Northern Territory or of a legislative or advisory body for another Territory prescribed by the regulations;

(ii) was a candidate at the election; and

(iii) failed to be elected; and

(b) the resignation took effect not earlier than 1 month before the date on which nominations for the election closed,

the Commission shall, upon application by that person within 2 months after the declaration of the result of the election, employ him at a classification and rate of pay equivalent to the classification and rate of pay that he had immediately before the date upon which his resignation took effect.

(4) A person employed under sub-section (3) shall be deemed to have continued in temporary employment in the Service as if the period of his employment in pursuance of this section and the unbroken period of his employment immediately prior to the date on which his resignation took effect were a continuous period of temporary employment.

**Terms and
conditions of
employment.**

46. (1) Subject to this Part, officers and employees hold office on such respective terms and conditions as the Commission determines.

(2) Where, immediately before the commencing date—

(a) an award of the Conciliation and Arbitration Commission;

(b) a determination made by the Public Service Arbitrator;

(c) a determination made by the Public Service Board under the *Public Service Act 1922-1975*; or

- (d) an agreement to which section 31 of the *Conciliation and Arbitration Act 1904-1974* applied,

applied to or in relation to the persons, whether officers or employees, who performed the duties of offices included in a class of offices in the Postmaster-General's Department, the Commission shall, in making its first determination of the terms and conditions of employment of the persons, whether officers or employees, performing the duties of positions included in the corresponding class of positions in the service, determine terms and conditions no less favourable to those last-mentioned persons than the terms and conditions that were applicable to those first-mentioned persons immediately before the commencing date by virtue of that award, determination or agreement.

Division 4—Classifications, Appointments and Promotions

47. (1) The Commission may create positions in the Service and may abolish positions in the Service.

Creation and
abolition of
positions.

(2) The Commission may determine the salary, or the range of salary, applicable to a position in the Service.

48. (1) The Commission may, from time to time, alter the designation of a position or alter the classification of a position in the Service by raising or lowering the salary, or range of salary, applicable to the position.

Re-classification.

(2) Whenever the classification of a position is altered, the position shall be deemed to be vacant.

(3) Where the Commission makes the same alteration of the classification of all positions having the same classification and designation, the Commission may direct that sub-section (2) shall not apply and, in that case, that sub-section does not apply.

(4) Where—

- (a) the Commission makes an alteration of the classification of a position in a case where there is no other position having the same classification and designation as that position; and
- (b) the Commission determines that that alteration is related to an alteration in respect of which a direction has been given under sub-section (3),

the Commission may direct that sub-section (2) shall not apply in relation to that first-mentioned alteration and, in that case, that sub-section does not apply.

(5) A direction given by the Commission under sub-section (3) or (4) shall be made known to officers as prescribed by the By-laws.

Filling of
vacant
positions.

49. The Commission may appoint a person as an officer, or transfer or promote an officer, to fill a vacant position in the Service.

Selection of
officers for
promotion.

50. (1) Subject to sub-section (2), in the selection of an officer for promotion to a vacant position, consideration shall be given to the relative efficiency of the officers available for promotion and, in the event of equality of efficiency of 2 or more officers, then to the relative seniority of those officers.

(2) The Commission may determine that, in the selection of an officer for promotion to a specified position, or of officers for promotion to vacant positions included in a specified class of positions, the selection shall be made on the basis of selecting for promotion the senior efficient officer available for promotion.

(3) For the purposes of this section—

- (a) “efficiency” means, subject to sub-section (4), special qualifications and aptitude for the discharge of the duties of the kind to be performed by the officer filling the position, together with merit and diligence and good conduct and, in the case of an officer who has at any time been engaged on war service, includes such efficiency as, in the opinion of the Commission, the officer would have attained but for his absence on war service;
- (b) “war service” includes “Defence service” as defined by sub-section 6 (1) of the *Defence (Re-establishment) Act* 1965-1973; and
- (c) the seniority of officers shall be determined as prescribed by the By-laws.

(4) Where, by virtue of a determination of the Commission, this sub-section applies in relation to a position, consideration shall also be given, in assessing the efficiency of an officer, to the special qualifications and aptitude of each officer available for promotion for the discharge of the duties of higher positions in the Service.

Qualification
for particular
positions.

51. (1) The Commission may determine that a person shall not be appointed, or that an officer shall not be transferred or promoted, to a specified position, or to a position included in a specified class of positions, unless the person or officer possesses such qualifications, and complies with such conditions, as are specified in the determination.

(2) A qualification or condition specified in a determination in accordance with sub-section (1) may be a qualification or condition that is defined or expressed by reference to the opinion of the Commission in relation to a particular matter.

(3) The Commission may, for the purposes of sub-section (1)—

- (a) hold, or authorize the holding of, such courses of training and such examinations as it thinks fit;

- (b) determine conditions of entry for any such course of training or any such examination; and
- (c) appoint instructors for the purposes of any such course of training and examiners for the purpose of any such examination.

(4) Notice of a determination made under sub-section (1) shall be published in the *Gazette* or in such other publication as is prescribed by the By-laws and the notice shall specify—

- (a) the subjects of the examination;
- (b) the scope of, or syllabus for, the course of training for each of the subjects of the examination; and
- (c) the subjects required to be passed at the examination.

52. (1) Where the Commission has determined that an officer shall not be transferred or promoted to a specified position or a position included in a specified class of positions unless the officer has passed an examination held or authorized by the Commission for transfer or promotion to that position, the Commission may also determine—

Transfers and promotions to certain positions.

- (a) that the transfer or promotion of officers to such a position shall be made only in accordance with this section; and
- (b) that officers who submit themselves for such an examination in a specified part of Australia shall, on passing the examination, be eligible for transfer or promotion under this section only to a vacant position located in that part of Australia.

(2) Where an officer passes an examination held or authorized by the Commission for transfer or promotion to a particular position, or to a position included in a particular class of positions, the officer shall be transferred, or promoted to, such a position—

- (a) if the Commission has made the determination referred to in paragraph (1) (b) in relation to the examination—as soon as practicable after a vacancy occurs in such a position that is located in the part of Australia in which the officer submitted himself for the examination; or
- (b) in any other case—as soon as practicable after a vacancy occurs in such a position.

(3) Where 2 or more officers have passed the same examination, those officers are entitled to be transferred or promoted in accordance with sub-section (2) according to the order of merit in which they passed the examination.

(4) A promotion under this section is not subject to the right of appeal provided in section 54.

Promotion of officers who complete courses of training for special positions.

53. (1) The Commission may determine that—

- (a) a specified position is a position the occupant of which is required to undergo a course of training for the purpose of enabling him to perform duties which require professional, technical or other knowledge; and
- (b) an officer who has completed that course of training to the satisfaction of the Commission is entitled to be promoted in accordance with this section to such position as is specified in the determination in relation to that first-mentioned position.

(2) An officer who has completed, to the satisfaction of the Commission, a course of training approved by the Commission, shall be promoted to the position specified by the Commission under paragraph (1) (b) as soon as practicable after a vacancy occurs in that position.

(3) Where 2 or more officers complete at the same time a course of training approved by the Commission, the promotion of those officers under sub-section (2) shall be made in accordance with the respective seniority of the officers.

(4) Until an officer who is entitled to promotion under sub-section (2) is promoted, the officer—

- (a) is an unattached officer having the designation appropriate to an officer occupying the position to which he is entitled to be promoted; and
- (b) shall, for the purposes of salary and of transfer to another position, be deemed to be the occupant of the position referred to in paragraph (a).

(5) A promotion under sub-section (2) is not subject to the right of appeal provided in section 54.

(6) A determination under sub-section (1) shall be made known to officers as prescribed by the By-laws.

(7) A reference in this section to a position shall, unless the contrary intention appears, be read as a reference to any position in a class of positions equivalent to that position.

Appeals against promotions.

54. (1) The promotion of an officer to a vacant position—

- (a) is provisional and without increased salary pending confirmation of the promotion;
- (b) shall be made known to officers in a manner prescribed by the By-laws; and
- (c) is subject to appeal as provided by this section.

(2) An officer who considers that he should have been promoted to a vacant position in preference to the officer provisionally promoted may appeal, in the manner specified in the regulations, against the provisional promotion—

- (a) on the ground of superior efficiency or of equal efficiency and seniority; or
- (b) if sub-section 50 (2) applies in relation to the position—on the ground that he is senior to the officer provisionally promoted and is efficient.

(3) The Commission may regard an appeal as having been made under this Act on a ground specified in sub-section (2) by an officer who, at any time within the time prescribed by the regulations for lodging an appeal, is absent from Australia on official duty or is absent from duty in circumstances prescribed by the regulations and in such a case this section has effect as if an appeal on that ground had been received from that officer and as if that officer had been, at the date of the appeal, performing his duties in the State or Territory in which, immediately before his departure from Australia on official duty or his absence from duty in circumstances prescribed by the regulations, as the case may be, he was performing his duties.

(4) Upon an appeal or appeals being made against a provisional promotion, a Promotions Appeal Board shall make a full inquiry into the claims of the appellant or appellants and the claims of the officer provisionally promoted and determine the appeal or appeals.

(5) The regulations may make provision for and in relation to the conduct of inquiries by Promotions Appeal Boards, including provisions for a Promotions Appeal Board to act as a central Promotions Appeal Board to determine an appeal, in a case where all the parties to the appeal do not perform their duties in the same State or Territory, after examining reports made to it by 2 or more other Promotions Appeal Boards and making such further inquiries (if any) as it thinks necessary into the claims of all the parties to the appeal.

(6) Where an appeal is allowed, the Commission shall cancel the provisional promotion and promote the appellant to the vacant position.

(7) Where there are 2 or more appellants in respect of the one promotion, the Promotions Appeal Board determining the appeals shall, if it considers that 2 or more appellants have established the grounds of their appeals, allow the appeal of 1 only of those appellants, being the appellant whom it considers to have the best claim to promotion to the vacant position having regard to the provisions of sub-section 50 (1) or sub-section 50 (2), whichever is applicable in relation to the position.

(8) Where, in respect of a provisional promotion, no appeal is duly made or 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 Commission shall confirm the provisional promotion.

(9) If, after notification has been made of a provisional promotion to a vacant position but before the promotion has been confirmed, the Commission is satisfied that the position is unnecessary or could be filled

by the transfer of an excess officer, or that the notification or further notification of the vacancy in the position is desirable, the Commission may cancel the provisional promotion.

(10) The Commission may cancel a provisional promotion in accordance with sub-section (9) whether or not there has been an appeal against the provisional promotion, and, where the Commission so cancels a provisional promotion, any appeals in respect of the promotion shall be discontinued.

(11) 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 position or for any other reason, to be eligible for promotion to the position concerned.

Chairman of
Promotions
Appeal
Boards.

55. (1) For the purposes of this Division, the Minister may appoint a person to be the Chairman of a Promotions Appeal Board.

(2) A person may be appointed under sub-section (1) as a full-time Chairman of a Promotions Appeal Board or as a part-time Chairman of a Promotions Appeal Board.

(3) A Chairman of a Promotions Appeal 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 such remuneration as is prescribed by the regulations.

(4) A Chairman of a Promotions Appeal Board shall be paid such allowances as are prescribed by the regulations.

(5) Sub-sections (3) and (4) have effect subject to the *Remuneration Tribunals Act 1973-1974*.

(6) Subject to sub-section (3) and (4), the Chairman of a Promotions Appeal Board holds office for such period, and upon such terms and conditions, as the Minister determines.

(7) A person holding office or appointed—

- (a) as Chairman of a Promotions Appeal Committee under the *Public Service Act 1922-1975*; or
- (b) as Chairman of a Promotions Appeal Board under the *Telecommunications Act 1975*,

may be appointed under this sub-section as a part-time Chairman of a Promotions Appeal Board under this Act while retaining that first-mentioned office and, in that event—

- (c) he shall not be appointed for a period that extends beyond the period of his appointment to that first-mentioned office;

- (d) he shall perform his duties as Chairman of a Promotions Appeal Board under this Act concurrently with the performance of the duties of that first-mentioned office;
- (e) he shall cease to hold office as Chairman of a Promotions Appeal Board under this Act if he ceases to hold that first-mentioned office; and
- (f) he shall not be paid remuneration or allowances in his capacity as Chairman of a Promotions Appeal Board under this Act, but, for the purposes of the payment of remuneration and allowances to him, his duties as the holder of that first-mentioned office shall be deemed to include his duties as Chairman of a Promotions Appeal Board under this Act.

(8) The By-laws may make provision for and in relation to the preservation of such rights as are specified in the By-laws by an officer who is appointed to be the full-time Chairman of a Promotions Appeal Board under this Act and for and in relation to the appointment of such an officer to a position in the Service upon the termination of his appointment under this section otherwise than upon the ground of his misconduct or of his having attained the age for retirement from the Service.

56. (1) For the purposes of this Division, the Commission shall, from time to time, arrange for the establishment of such Promotions Appeal Boards as are required. Promotions
Appeal
Boards.

(2) A Promotions Appeal Board, in relation to an appeal against a provisional promotion to a vacant position, shall be constituted by—

- (a) a Chairman, being a person who holds an office of Chairman of a Promotions Appeal Board;
- (b) an officer nominated by the Commission for the purposes of the appeal; and
- (c) an officer nominated by the organization that is, by virtue of the regulations, the appropriate organization in respect of the appeal.

(3) An officer shall not be nominated as a member of a Promotions Appeal Board in relation to a provisional promotion to a vacant position if that officer has himself been provisionally promoted to the vacant position or has himself appealed against the provisional promotion to that vacant position.

(4) Where, at a meeting of a Promotions Appeal Board, the members are divided on a question, that question shall be decided according to the decision of the majority.

Division 5—Tenure of Office

Tenure of
office.

57. (1) An officer who has attained the age of 60 years is entitled to retire from the Service if the officer desires to do so, but may, subject to this Part, continue in the Service until he attains the age of 65 years.

(2) An officer who attains the age of 65 years ceases to be an officer.

Excess
officers.

58. (1) If, at any time, the Commission finds that a greater number of officers occupying positions of a particular classification is employed than is necessary for the efficient working of the Service, an officer whom the Commission finds to be in excess may be transferred to such other position of equal classification as the officer is competent to fill, and, if no such position is available, the officer may be transferred to a position of lower classification.

(2) If no position is available for the officer, the Commission may retire him from the Service.

(3) The regulations shall make provision for and in relation to the review of a decision of the Commission under this section upon application by an officer affected by it.

Retirement,
&c., on
ground of
inefficiency,
incapacity,
&c.

59. (1) If an officer appears to the Commission to be inefficient or incompetent, or unable to discharge or incapable of discharging the duties of his position, the Commission may—

- (a) transfer him to another position having the same classification as the position held (whether in the same or a different locality);
- (b) reduce him to a lower position and salary; or
- (c) retire him from the Service.

(2) The regulations shall make provision for and in relation to the review of a decision of the Commission under this section upon application by an officer affected by it.

Division 6—Dismissals and Punishments

Definitions.

60. (1) In this Division, unless the contrary intention appears, “salary” does not include such allowances as are prescribed by the By-laws.

(2) In this Division, a reference to misconduct, in relation to an officer, is a reference to a failure of the officer to fulfil his duty as an officer.

Disciplinary
action.

61. (1) For the purposes of this Division, an officer shall be taken to have failed to fulfil his duty as an officer if and only if—

- (a) he wilfully disobeys or wilfully disregards a direction given to him as an officer and given by a person having authority to give the direction;

- (b) he is inefficient or incompetent by reason of causes within his own control;
- (c) he is negligent or careless in the discharge of his duties;
- (d) he is guilty of improper conduct as an officer;
- (e) he is guilty of improper conduct otherwise than as an officer, being conduct that affects adversely the performance of his duties, is prejudicial to the interests of the Commission or damaging to the business of the Commission;
- (f) he contravenes or fails to comply with a provision of this Act, of the regulations or of the By-laws that is applicable to him or with the terms and conditions upon which he is employed; or
- (g) he has, whether before or after becoming an officer, wilfully supplied to the Commission, to an officer or to some other person acting on behalf of the Commission incorrect or misleading information in connexion with his appointment to the Service.

(2) If a supervisor of an officer has, at any time, reason to believe that the officer may have failed to fulfil his duty as an officer, the supervisor may require the officer to furnish to the supervisor, in writing, an explanation of the matters alleged to constitute the failure and may, after consideration of any explanation furnished by the officer, if he is of the opinion that the officer has failed to fulfil his duty as an officer—

- (a) counsel the officer; or
- (b) furnish a report concerning the matters, together with any explanation furnished to him, to an officer authorized for the purposes of sub-section (3).

(3) Where an officer authorized by the Commission for the purposes of this sub-section is of the opinion, whether by reason of his consideration of a report furnished under sub-section (2) or otherwise, that an officer may have failed to fulfil his duty as an officer, the authorized officer shall, as soon as practicable, decide whether he should be charged and—

- (a) if he decides that the officer should not be charged—may counsel the officer or cause a supervisor of the officer to counsel the officer; or
- (b) if he decides that the officer should be charged—by writing under his hand delivered to the officer, charge the officer with the failure.

(4) Where an officer charged under sub-section (3) so requests, a copy of the charge shall be furnished to the organization to which the officer belongs.

(5) Where an officer is charged with misconduct, an officer authorized for the purposes of this sub-section, not being either the

supervisor of the officer charged or an officer authorized by the Commission for the purposes of sub-section (3), shall, without undue delay, hold an inquiry into the charge.

(6) In an inquiry for the purposes of sub-section (5), a formal hearing is not required, but the officer shall be notified that an inquiry is to be held into the alleged misconduct and given an opportunity to state, in writing, within 7 days or such longer period as the officer holding the inquiry may allow after the notice is furnished to him, whether he admits or denies the truth of the matters alleged to constitute the misconduct and to furnish a statement in relation to those matters.

(7) Where an officer has furnished a statement in relation to the matters alleged to constitute misconduct, the officer shall, if he so requests, be given the opportunity of making a further oral statement to the officer holding the inquiry and, if he does so, a written record of his further statement shall be made by that officer.

(8) An officer charged with misconduct shall not be taken, by reason only of having failed to deny the truth of a matter alleged to constitute the misconduct, to have admitted the truth of that matter.

(9) Where the officer who held an inquiry into a charge is satisfied that the officer charged has failed to fulfil his duty as an officer, he may counsel the officer or cause a supervisor of the officer to counsel him, or, if he is of the opinion that other action is necessary—

- (a) admonish the officer;
- (b) direct that a sum not exceeding \$40 be deducted from the salary of the officer;
- (c) if the officer occupies a position to which a range of salary is applicable and is in receipt of a salary other than the minimum salary of that range—direct that his salary be reduced to a lower salary within that range for a period not exceeding 12 months; or
- (d) recommend to the Commission in writing—
 - (i) that the Commission transfer the officer to another position, whether at the same or a different locality, being a position for which he is qualified and which has the same classification as the position held by the officer, and the salary, within the salary range of the position, that should be paid to the officer;
 - (ii) that the Commission transfer the officer to another position, whether in the same or a different locality, being a position for which he is qualified and which has a lower classification than the position held by the officer, and the salary, within the salary range of the position, that should be paid to the officer; or
 - (iii) that the Commission dismiss the officer from the Service.

(10) Where an officer makes a recommendation specified in paragraph (9) (d) in respect of an officer, he shall furnish to the Commission, with his recommendation, full particulars of his findings in relation to the facts giving rise to the misconduct.

(11) Where an officer makes a recommendation specified in paragraph (9) (d) in respect of an officer, the Commission may, after consideration of the particulars furnished under sub-section (10) counsel the officer or if it considers that other action is necessary—

- (a) admonish the officer;
- (b) decide—
 - (i) to give effect to the recommendation; or
 - (ii) to take any other action that could have been recommended under that paragraph; or
- (c) give a direction referred to in paragraph (9) (b) or (c).

(12) Where an officer recommends, or the Commission decides, that an officer be transferred to a position having the same classification as the position previously held by him and that he be paid a salary that is the equivalent of the salary previously paid to him, the officer may also recommend or the Commission may also direct, as the case may be, that a sum not exceeding \$40 be deducted from the officer's salary.

(13) Where an officer authorized for the purposes of sub-section (5) or the Commission gives a direction that the salary of an officer be reduced, the officer is entitled, at the expiration of the period specified by the first-mentioned officer or the Commission in that direction, to be paid salary at the rate at which salary would have been payable to him if the reduction had not taken place.

(14) The admonition of an officer by the Commission or by an officer authorized for the purposes of sub-section (5) does not have any effect—

- (a) if the officer appeals against the admonition—unless the appeal lapses or is withdrawn or a Disciplinary Appeal Board confirms the admonition; or
- (b) in any other case—until the expiration of the period within which the officer may appeal against the admonition to a Disciplinary Appeal Board.

(15) A direction or decision under this section by the Commission or by an officer authorized for the purposes of sub-section (5) does not take effect—

- (a) if the officer appeals against the direction or decision—unless the appeal lapses or is withdrawn or a Disciplinary Appeal Board confirms, either with or without a variation, the direction or decision; or

- (b) in any other case—until the expiration of the period within which the officer may appeal against the direction or decision to a Disciplinary Appeal Board.

Suspension
of officers.

62. (1) Where—

- (a) an officer has been charged with having committed—
 - (i) an offence against a law of Australia or of a State or Territory; or
 - (ii) an offence against a law of a foreign country, being an offence which, if committed in Australia, would have constituted an offence against a law of Australia or of a State or Territory; or

- (b) the Commission is of the opinion that an officer may have failed to fulfil his duty as an officer,

and the Commission is of the opinion that it would be prejudicial to the effective operation of the Commission, to the interests of the public or to the interests of the officer and his fellow officers if the officer were to continue to perform the duties of his existing position, the Commission may, by notice in writing—

- (c) suspend the officer from duty; or
- (d) transfer the officer temporarily to another position for which he is qualified (whether at the same or a different locality) having the same classification as the position held by the officer.

(2) Where an officer is suspended from duty otherwise than by reason of circumstances referred to in paragraph (1) (a) before he is charged with misconduct, he shall, until an officer authorized for the purposes of sub-section 61 (3) decides whether he should be charged, be deemed to be absent on leave of absence with salary.

(3) Where an officer is suspended from duty at a time when he is absent on leave of absence, the suspension does not prevent his receiving any salary to which he is entitled during that period of absence.

(4) The suspension of an officer from duty does not prevent the granting to the officer of leave of absence with salary.

(5) Except as provided by sub-section (2), (3) or (4) or by section 63, an officer is not, unless the Commission, being satisfied that the officer is suffering or has suffered hardship, otherwise directs, entitled to be paid salary in respect of the period during which he is suspended.

(6) An officer who is suspended from duty is entitled to engage in paid employment during any period of suspension without salary.

Removal
and
variation of
suspension.

63. (1) Where an officer is suspended from duty under section 62—

- (a) the Commission may, at any time, whether upon application by the officer or otherwise, remove the suspension or direct that the officer be paid salary during the suspension; and

- (b) the Commission shall, if the suspension continues for more than 30 days, forthwith after the suspension has continued for more than 30 days, consider whether the suspension should be removed or salary should be paid during the suspension.

(2) Where an officer has, by reason of his having been charged with an offence referred to in paragraph 62 (1) (a), been suspended from duty or transferred temporarily to another position and, upon the hearing of the charge—

- (a) the officer does not plead guilty, and is not found guilty in respect of the offence of which he is charged or of another offence of a kind referred to in that paragraph; or

(b) the charge is not proceeded with,
the Commission shall, if it has not previously done so, remove the suspension or transfer the officer back to the position that he had previously held, as the case may be.

(3) Where an officer has been suspended from duty or transferred temporarily to another position in circumstances referred to in paragraph 62 (1) (b) and—

- (a) if the officer is charged with misconduct—the officer holding an inquiry into the misconduct or a Disciplinary Appeal Board finds that the charge has not been established or the charge is withdrawn; or
- (b) in any other case—an officer authorized for the purposes of sub-section 61 (3), decides that the officer should not be charged with misconduct,

the Commission shall, if it has not previously done so, remove the suspension or transfer the officer back to the position that he had previously held, as the case may be.

(4) Where—

- (a) an officer has been suspended from duty under section 62;
- (b) the amount of salary that would otherwise have been paid to the officer in respect of the period or a part of the period of the suspension was not paid to him; and
- (c) the Commission removes the suspension,

the officer shall, subject to sub-section (5), be paid that amount of salary.

(5) Where the Commission is satisfied that an officer to whom sub-section (4) applies has engaged in paid employment or work during the period or a part of the period of his suspension, the amount payable to him under that sub-section shall be reduced by the amount equal to the total of the amount of the earnings that the Commission is satisfied were received or are receivable by him in respect of that employment or work.

(6) Where the suspension of an officer who had, after the suspension commenced, sought and been granted leave of absence for a part of the

period of suspension, is removed under this section, the officer is entitled to a credit of a period of leave of absence equal to that part of the period of suspension.

(7) Except where an officer is dismissed from the Service, the period during which the officer is suspended from duty counts as service for all purposes.

(8) Where an officer retires or resigns from the Service or dies while he is suspended from duty without salary, the Commission may, in its discretion, authorize payment to the officer, or to the estate of the deceased officer, of an amount equal to the salary that would otherwise have been paid to the officer in respect of the period of his suspension without salary less the amount (if any) of the earnings that the Commission is satisfied the officer received or was entitled to receive in respect of any employment or work engaged in by him while so suspended.

(9) Where, immediately before a direction or decision of an officer or of the Commission under section 61, a decision of the Commission under sub-section 64 (1) or a decision of a Disciplinary Appeal Board under section 65 takes effect in relation to an officer, the last-mentioned officer is under suspension from duty in connexion with the misconduct or offence to which the direction or decision is related, the suspension ceases upon that direction or decision taking effect.

Convictions
by courts.

64. (1) Where a court convicts an officer on a charge for an offence referred to in paragraph 62 (1) (a) or a court, without recording a conviction, finds that an officer has committed such an offence and the Commission, after giving the officer an opportunity to furnish to it, in writing, any explanation that he desires to make in relation to the offence, is of the opinion that, having regard to the nature and circumstances of the offence and the nature of the duties of the officer, the interests of the Commission justify it in so doing, the Commission may counsel the officer or may decide to—

(a) transfer the officer to another position, whether at the same or a different locality, being a position for which he is qualified and which has the same classification as, or a lower classification than, the position held by the officer, and determine the salary, within the salary range of the position, that is to be paid to the officer; or

(b) dismiss the officer from the Service.

(2) A decision of the Commission under sub-section (1) with respect to an officer, does not take effect—

(a) if the officer appeals against the decision—unless the appeal lapses or is withdrawn or a Disciplinary Appeal Board confirms, either with or without a variation, the decision; or

- (b) in any other case—until the expiration of the period within which the officer may appeal against the decision to a Disciplinary Appeal Board.

(3) Where, after a person charged with an offence referred to in paragraph 62 (1) (a) has been dismissed from the Service in accordance with a decision of the Commission under sub-section (1) the finding of the court in relation to the offence with which he was charged is nullified, the Commission may, upon application, in writing, made to it by the person, appoint the person as an officer, without probation, to fill his original position or an equivalent position, or, if such a position is not available, an available position as nearly as possible equivalent to his original position.

(4) Where an officer charged with an offence referred to in paragraph 62 (1) (a) has, under sub-section (1), been transferred to another position and the finding of the Court in relation to the offence with which he was charged is nullified, the Commission may, upon application, in writing, made to it by the officer, transfer the officer to his original position or an equivalent position, or, if such a position is not available, to an available position as nearly as possible equivalent to his original position.

(5) Where the Commission refuses an application under sub-section (3) or (4), it shall notify the applicant, in writing, accordingly and furnish to him its reasons for the refusal.

(6) Where an officer serves a term of imprisonment, or a period of custody in relation to an alleged offence, but is not dismissed—

- (a) he shall be deemed, for the duration of his imprisonment or custody, to be on leave of absence without pay;
- (b) his service before that period of imprisonment or custody shall be regarded as being continuous with his service after that period;
- (c) the period of his imprisonment or custody shall not, unless the Commission otherwise determines, be regarded as service for any purpose under this Act; and
- (d) the Commission may determine that the original position occupied by the officer is vacant.

(7) For the purposes of this section, a finding of a court in relation to an offence shall be regarded as having been nullified—

- (a) where a person has been convicted on the basis of that finding—if the conviction has subsequently been quashed or otherwise nullified or the person convicted has received a pardon or has been released from prison as a result of an inquiry into the conviction; or
- (b) in any other case—if the finding has been set aside.

(8) This section does not prevent an officer from being dealt with under another provision of this Act, but an officer shall not be punished under this Act twice in respect of the same matter.

Appeals.

65. (1) An officer may appeal to a Disciplinary Appeal Board—

- (a) against his admonition by, or a direction or decision made or given with respect to him by, an officer or the Commission under section 61; or
- (b) against a decision made with respect to him by the Commission under sub-section 64 (1).

(2) Where the Commission has refused an application under sub-section 64 (3) or (4) the applicant may appeal against the refusal to a Disciplinary Appeal Board.

(3) In the hearing of an appeal under this section, the Disciplinary Appeal Board may take evidence on oath or affirmation.

(4) The regulations may prescribe the manner in which, and the time within which, appeals may be made under this section and the manner in which the hearing of appeals so made shall be conducted and may include provision for or in relation to the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation and the administering of oaths and affirmations.

(5) A Disciplinary Appeal Board shall hear each appeal submitted to it under sub-section (1) and may confirm, vary or set aside the direction or decision against which the appeal is made.

(6) Where an officer appeals under sub-section (1) against a direction or decision on the ground that the action to be taken in accordance with that direction or decision is excessively severe, evidence may be given on the hearing of the appeal—

- (a) if the officer was, under section 62, suspended without salary prior to the giving of that direction or the making of that decision—of any loss of earnings arising from that suspension;
- (b) if the officer is to be transferred to another position—of the expenses that will be incurred by the officer in connexion with that transfer; and
- (c) of matters relating to the previous employment history and general character of the appellant.

(7) A Disciplinary Appeal Board shall hear each appeal duly submitted to it under sub-section (2) and may—

- (a) confirm the refusal appealed against; or
- (b) direct the Commission as follows:—
 - (i) if the appeal is against the refusal of an application under sub-section 64 (3)—that the Commission appoint

the person as an officer, without probation, to fill his original position or an equivalent position, or, if such a position is not available, an available position as nearly as possible equivalent to his original position; or

- (ii) if the appeal is against the refusal of an application under sub-section 64 (4)—that the Commission restore the officer to a salary equivalent to his former salary or transfer him to his original position or an equivalent position, or, if such a position is not available, to a position as nearly as possible equivalent to his original position.

(8) A Disciplinary Appeal Board shall give reasons, in writing, for its decision on an appeal.

(9) The Commission shall take such action as is necessary to give effect to a decision of a Disciplinary Appeal Board.

66. (1) For the purposes of this Part, the Commission shall, from time to time, arrange for the establishment of such Disciplinary Appeal Boards as are required. Disciplinary
Appeal
Boards.

(2) A Disciplinary Appeal Board with respect to an appeal by an officer shall be constituted by—

- (a) a Chairman, who shall be a person appointed by the Minister to be the Chairman of a Disciplinary Appeal Board;
- (b) an officer nominated by the Commission; and
- (c) a person nominated as provided by the regulations to represent officers.

(3) A person shall not be appointed to be the Chairman of a Disciplinary Appeal Board unless he is or has been a magistrate or is a barrister or solicitor of not less than 5 years standing.

(4) A Chairman of a Disciplinary Appeal 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 such remuneration as is prescribed by the regulations.

(5) A Chairman of a Disciplinary Appeal Board shall be paid such allowances as are prescribed by the regulations.

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

(7) Subject to sub-sections (4) and (5), the Chairman of a Disciplinary Appeal Board holds office for such period, and upon such terms and conditions, as the Minister determines.

(8) The officer referred to in paragraph (2) (b) and the person referred to in paragraph (2) (c) shall be nominated for the purposes of a particular appeal only, and an officer concerned in the laying of a charge

against the appellant or in the inquiry related to the charge shall not be nominated for the purpose of an appeal relating to the charge.

(9) A Disciplinary Appeal Board may, when only 2 of the 3 members are present, with the consent of the appellant and of the Commission, exercise all the powers of a Disciplinary Appeal Board in respect of an appeal.

(10) Where, at a meeting of a Disciplinary Appeal Board, the members are divided in opinion on a question, that question shall be decided according to a decision of the majority but, if 2 members only are present and those members are equally divided on a question, the appeal shall be deemed to be adjourned for the purpose of being reheard by a Disciplinary Appeal Board.

Review of
findings.

67. (1) Where—

- (a) an officer authorized for the purpose of sub-section 61 (5) or a Disciplinary Appeal Board has found that a charge against a person under sub-section 61 (3) has been established; and
- (b) in respect of the charge—
 - (i) a sum was deducted from the salary of the person;
 - (ii) the salary of the person was reduced;
 - (iii) the person was transferred to another position; or
 - (iv) the person was dismissed from the Service,

the person may, at any time, request the Commission, in writing, to review the finding, or the action taken in respect of the charge, on the ground that evidence that was not given, and could not reasonably be expected to be given, on behalf of the person in the course of the investigation of the charge is now available and that the evidence might, if it had been given, have resulted in the charge being found not to have been established, or in less severe action being taken in respect of the charge, as the case may be.

(2) A request under sub-section (1) shall set out particulars of the evidence that has become available.

(3) Where the Commission is satisfied that the ground of the request is established, the Commission shall review the finding or the action taken in respect of the charge, as the case may be.

(4) Where the Commission has reviewed a finding, the Commission shall—

- (a) if it is satisfied, in the light of the evidence given when the charge was being investigated and the evidence before the Commission in connexion with the review, that the person failed to fulfil his duty as an officer—confirm the finding; or
- (b) in any other case—quash the finding and take such action by way of recompensing the person as is, in the opinion of the Commission, reasonable and practicable in all the circumstances.

(5) Where the Commission has reviewed the action taken in respect of a charge, the Commission shall—

- (a) if it is satisfied, in the light of the evidence given when the charge was investigated and the evidence before the Commission in connexion with the review, that the action so taken was not too severe—confirm the action; or
- (b) in any other case—take such action to mitigate the severity of the action taken in respect of the charge as is, in the opinion of the Commission, reasonable and practicable in all the circumstances.

(6) Without limiting the power of the Commission under sub-section (4) or (5), the Commission may, if it considers it appropriate to do so, reappoint the person as an officer and appoint him to, or transfer the person to, his original position or an equivalent position or, if such a position is not available, to an available position as nearly as possible equivalent to his original position.

(7) In this section—

- (a) a reference to the investigation of a charge is a reference—
 - (i) if the person charged appealed to a Disciplinary Appeal Board—to the investigation of the charge by the Disciplinary Appeal Board; or
 - (ii) in any other case—to the investigation of the charge by the officer authorized under sub-section 61 (5) to investigate the charge; and
- (b) a reference to the giving of evidence includes a reference to the submission or production of statements or other material.

Division 7—Forfeiture of Office

68. (1) Where an officer is absent from duty without permission, and has been so absent for a continuous period of not less than 4 weeks, the Commission may send to him by pre-paid registered post addressed to him at the address of the officer last known to the Commission a notice informing him that unless within a period of 2 weeks from and including the date on which the notice was sent—

Forfeiture of office.

- (a) he returns to duty; or
- (b) he explains his absence and seeks the permission of the Commission for any further period of absence that may be necessary having regard to that explanation,

he will be deemed to have resigned upon the expiration of that period of 2 weeks.

(2) Where an officer to whom a notice under sub-section (1) has been sent does not, within a period of 2 weeks from and including the date on which the notice was so sent—

- (a) return to duty; or
- (b) explain his absence and seek the permission of the Commission for a further period of absence,

and the notice has not been revoked under sub-section (11), he shall be deemed to have resigned on the day following the expiration of that period of 2 weeks.

(3) Where a notice has been sent to an officer under sub-section (1) and, within the period of 2 weeks after that notice was so sent, the officer explains his absence and seeks the permission of the Commission for a further period of absence, the Commission shall, as soon as practicable, consider the matter and may, by notice in writing sent to him by pre-paid registered post addressed to him at his address last known to the Commission, inform him—

- (a) that he has been granted leave of absence for such period and on such conditions as are specified in the notice; or
- (b) that he is required to return to duty and that, unless he returns to duty within a period of 2 weeks from and including the date on which the notice is sent he will be deemed to have resigned upon the expiration of that last-mentioned period.

(4) Where an officer who is required by a notice sent to him under sub-section (3) to return to duty does not return to duty within the period referred to in the notice and the notice is not revoked under sub-section (11), he shall be deemed to have resigned on the day following the expiration of that period.

(5) A person who is deemed to have resigned his office in accordance with sub-section (2) or (4) may apply, in writing, to the Commission for re-appointment.

(6) Where the Commission is satisfied that a person making application under sub-section (5) had reasonable grounds for being absent, it may appoint the person as an officer, without probation, to fill his original position or an equivalent position, or, if such a position is not available, an available position as nearly as possible equivalent to his original position.

(7) Where the Commission refuses an application under sub-section (5), it shall notify the applicant, in writing, accordingly and furnish to him the reasons for its refusal.

(8) Where the Commission has refused an application under sub-section (5) the applicant may appeal against the refusal to a Disciplinary Appeal Board established under section 66.

(9) A Disciplinary Appeal Board shall hear each appeal submitted to it under sub-section (8) and may—

- (a) confirm the refusal appealed against; or

- (b) direct the Commission as follows, that is to say that it appoint the person as an officer, without probation, to fill his original position or an equivalent position, or, if such a position is not available, an available position as nearly as possible equivalent to the original position.

(10) The provisions of sub-sections 65 (3), (4), (8) and (9) apply to appeals made under this section in like manner as they apply to appeals against refusals by the Commission of applications under sub-section 64 (3).

(11) The Commission may, at any time before an officer is to be deemed to have resigned under this section, by notice in writing sent to the officer by pre-paid registered post addressed to him at his address last known to the Commission, revoke a notice previously sent to the officer under this section and the notice is then void and of no effect.

Division 8—Powers and Functions of the Commonwealth Conciliation and Arbitration Commission in respect of the Service

69. (1) In this Division, unless the contrary intention appears—

Interpretation.

“Conciliation and Arbitration Commission” means the Conciliation and Arbitration Commission established by the *Conciliation and Arbitration Act 1904-1974*;

“industrial dispute in respect of the Service” means a dispute (including a threatened, impending or probable dispute) as to an industrial matter in respect of the Service, and includes—

- (a) a part of an industrial dispute in respect of the Service;
- (b) an industrial dispute in respect of the Service so far as it relates to a matter in dispute; or
- (c) a question arising in relation to an industrial dispute in respect of the Service;

“industrial matter in respect of the Service” means any matter in relation to the salaries, wages, rates of pay or other terms or conditions of service or employment of officers or employees, and includes questions arising in relation to such a matter;

“industrial question in respect of the Service” means—

- (a) an industrial dispute in respect of the Service; and
- (b) an industrial matter in respect of the Service;

“prescribed” means prescribed by regulations made under this Act.

(2) Subject to sub-section (1), expressions used in this Division that are defined by section 4 of the *Conciliation and Arbitration Act 1904-1974* have in this Division the same respective meanings as they have in that Act.

(3) Officers and employees shall be deemed to be employees in an industry within the meaning of the *Conciliation and Arbitration Act* 1904-1974.

Settlement of industrial disputes and determination of industrial matters in respect of the Service.

70. (1) The Conciliation and Arbitration Commission is empowered—

- (a) to prevent or settle, by conciliation or arbitration, industrial disputes in respect of the Service; and
- (b) to hear and determine industrial matters in respect of the Service submitted to it.

(2) In relation to an industrial question in respect of the Service, the Conciliation and Arbitration Commission may, where it thinks it proper to do so, make an award that, in the opinion of the Conciliation and Arbitration Commission, is not, or may not be, in accord with this Part or with any other law of Australia relating to salaries, wages, rates of pay or terms and conditions of service or employment of officers and employees, not being—

- (a) the *Compensation (Australian Government Employees) Act* 1971-1974, the *Commonwealth Employees' Furlough Act* 1943-1973 or the *Superannuation Act* 1922-1974; or
- (b) any other prescribed Act or the prescribed provisions of any other Act.

Application of provisions of Conciliation and Arbitration Act.

71. (1) Subject to this Division, Division 1 of Part III of the *Conciliation and Arbitration Act* 1904-1974 extends to and in relation to the powers and functions of the Conciliation and Arbitration Commission under this Division, to and in relation to proceedings under this Division and to and in relation to awards made under this Division.

(2) In the application of Division 1 of Part III of the *Conciliation and Arbitration Act* 1904-1974 in accordance with sub-section (1) of this section—

- (a) references to industrial disputes shall be read as references to industrial questions in respect of the Service;
- (b) references to the parties to an industrial dispute shall be read, in relation to the powers of the Commission under paragraph 70 (1) (b) of this Act, as references to employees to whose employment the industrial disputes or industrial matters relate, the Australian Postal Commission and organizations of which any such employees are members; and
- (c) references to arbitration shall be read as including references to the hearing and determination of industrial matters in respect of the Service.

72. An award made under this Division shall, for the purposes of the *Conciliation and Arbitration Act* 1904-1974, be deemed to have been made under that Act.

Awards deemed to be made under Conciliation and Arbitration Act.

73. The *Public Service Arbitration Act* 1920-1973 does not apply in relation to the employment of officers or employees of the Commission.

Public Service Arbitration Act not to apply.

PART VI—FINANCE

74. (1) The Treasurer shall determine—

Capital.

- (a) the amount that should, in his opinion, be taken to be the value of the rights, property and assets vested in the Commission in accordance with paragraph 29 (1) (a) of the Transitional Provisions Act having regard to the values of the assets of Australia by reference to which the amounts shown in the Balance Sheet, as at the date immediately preceding the commencing date, of the Australian Post Office Services as the values of the assets referred to in that Balance Sheet were ascertained; and
- (b) the amount that should, in his opinion, be taken to be the sum of the amounts of the liabilities that became the responsibility of the Commission in accordance with paragraph 29 (1) (c) of the Transitional Provisions Act having regard to the amounts of the liabilities of Australia by reference to which the amounts shown in the Balance Sheet, as at the date immediately preceding the commencing date, of the Australian Post Office Services as “current liabilities” and “provision for long service leave” were ascertained.

(2) Amounts aggregating the amount by which the amount determined under paragraph (1) (a) exceeds the amount determined under paragraph (1) (b) are payable by the Commission to Australia at such times, and by such instalments, as the Treasurer, from time to time, determines.

(3) The Commission is liable to pay to Australia, at such times, and by such instalments, as the Treasurer from time to time determines, interest upon the amount by which the amount determined under paragraph (1) (a) exceeds the amount determined under paragraph (1) (b), less the sum of any amounts paid by the Commission under sub-section (2), at such rates as the Treasurer from time to time determines.

(4) The Treasurer may, under sub-section (3), determine different rates of interest in respect of different parts of the amount in respect of which interest is payable under that sub-section.

(5) Before making a determination under this section, the Treasurer shall afford the Commission an opportunity to furnish advice concerning the proposed determination and shall have regard to any advice furnished to the Treasurer by the Commission with respect to the proposed determination.

Borrowing
by the
Commission.

75. (1) The Commission may, with the approval of the Treasurer, borrow moneys that are from time to time necessary for the performance of its functions.

(2) The Treasurer may, on behalf of Australia, out of moneys appropriated by the Parliament for the purpose, lend to the Commission, at such rate of interest and on such terms and conditions as he determines, moneys that the Commission is authorized to borrow under subsection (1).

(3) The Commission may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(4) The Treasurer may, on behalf of Australia, guarantee the repayment by the Commission of amounts borrowed under this section otherwise than from Australia and the payment of interest on amounts so borrowed.

(5) The Commission shall not borrow moneys except in accordance with this section.

Financial
policy of the
Commission.

76. (1) In the performance of its functions, the Commission shall, in each financial year, pursue, as far as practicable, a policy directed towards having secured in respect of that year revenue sufficient—

- (a) to meet all expenditure, and provision for expenditure, of the Commission properly chargeable to revenue; and
- (b) to provide, for expenditure by the Commission by way of capital expenditure, a sum equal to such proportion, not being less than one-half, as the Commission deems fit, of the amount estimated to be the amount ascertained in accordance with the formula $A + B - C + D - E - F + G$, where—

A is the amount of the expenditure, and provision for expenditure, of the Commission, in respect of the financial year, on fixed assets, excluding any provision for depreciation and long service leave;

B is the amount shown in the Balance Sheet of the Commission in respect of the financial year as the value of “stores” at the end of the year;

C is the amount shown in that Balance Sheet as the value of “stores” at the end of the last preceding year;

- D is the amount shown in that Balance Sheet as the sum of the values of all the “current assets” of the Commission at the end of the year;
- E is the amount shown in that Balance Sheet as the sum of the values of all the “current assets” of the Commission at the end of the last preceding year;
- F is the amount shown in that Balance Sheet as the sum of the amounts of all the “current liabilities” of the Commission at the end of the year; and
- G is the amount shown in that Balance Sheet as the sum of the amounts of all the “current liabilities” of the Commission at the end of the last preceding year.

(2) The Commission shall, in the performance of its functions, operate as efficiently as possible and make available services provided by the Commission in the performance of those functions at rates and charges that are as low as practicable, consistently with its duty under sub-section (1).

(3) For the purposes of this section, the provision for expenditure properly chargeable to the revenue of a financial year includes—

- (a) provision made in respect of that year for depreciation; and
- (b) provision made in respect of that year for future or contingent liabilities, including—
 - (i) provision, as determined by the Treasurer, in respect of superannuation payments payable, or likely to become payable, in respect of officers and employees; and
 - (ii) provision for furlough or long service leave.

77. (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account. Bank accounts.

(2) The Commission shall pay all moneys received by it into an account referred to in this section.

78. (1) Subject to this Act, the moneys of the Commission may be applied by the Commission— Application of moneys.

- (a) in payment or discharge of the costs, expenses and other obligations of the Commission;
- (b) in payment of remuneration and allowances payable to any person appointed or employed under this Act; and
- (c) in making payments to Australia as provided by this Act, but not otherwise.

(2) Moneys of the Commission not immediately required for the purposes of the Commission may be invested—

- (a) on fixed deposit with an approved bank;

- (b) in securities of Australia; or
- (c) in any other manner approved by the Treasurer.

Surplus
revenue.

79. (1) For the purposes of this Act, the surplus of the Commission in a financial year is the amount (if any) of revenue remaining—

- (a) after meeting the expenditure and the provision for expenditure properly chargeable to that revenue; and
- (b) after providing for expenditure by the Commission, by way of capital expenditure, an amount equal to one-half of the amount ascertained in accordance with the formula specified in paragraph 76 (1) (b).

(2) The surplus of the Commission for a financial year shall be applied in such manner as the Minister determines.

(3) In making a determination under sub-section (2), regard shall be had to any advice that the Commission has furnished to the Minister in relation to the financial affairs of the Commission.

(4) For the purposes of this section, the provision for expenditure properly chargeable to the revenue received or receivable in respect of a financial year has the same meaning as in section 76.

Proper
accounts to
be kept.

80. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission in accordance with accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

Estimates.

81. The Commission shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if so directed by the Minister, for any other period, and shall submit those estimates to the Minister not later than such date as the Minister directs.

Contracts.

82. The Commission shall not, except with the approval of the Minister—

- (a) enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$500,000 or, if a higher amount is prescribed by the regulations, that higher amount; or
- (b) enter into a lease of land for a period exceeding 10 years.

Exemption
from
taxation.

83. The Commission is not subject to taxation under any law of Australia or of a State or Territory.

84. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and records relating to assets of, or in the custody of, the Commission and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and the audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his doing so. Audit.

(2) The Auditor-General may, in his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody or disposal of assets by the Commission.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

PART VII—OFFENCES

85. (1) A person shall not—

- (a) carry or convey a letter for reward; or
- (b) cause a letter to be carried or conveyed for reward otherwise than by the Commission.

Penalty: \$1,000.

(2) Sub-section (1) does not apply to—

- (a) the carriage or conveyance of a letter—
 - (i) that exceeds 500 grams in weight; or
 - (ii) that is concerned only with goods and is carried or conveyed with, and delivered with, those goods;

Letters not to
be carried
for reward.

- (b) the carriage or conveyance of a letter that relates only to the affairs of a person and is carried or conveyed by an employee of the person;
- (c) the carriage or conveyance of a letter from the place of business or residence of a person for posting at the nearest office of the Commission;
- (d) the carriage or conveyance of a letter from an office of the Commission to the place of business or residence of the person to whom the letter is addressed; or
- (e) the carriage or conveyance of a letter for the Commission by an officer or employee of the Commission, a contractor to the Commission or an officer or employee of such a contractor.

Forgery of
stamps, &c.

86. (1) An envelope, letter-card, aerogramme or other article on which the Commission has caused to be impressed or printed a representation of, or a design resembling, a postage stamp indicating an amount of postage is a postal article referred to in this sub-section.

(2) A person shall not forge a postage stamp of a kind issued by the Commission or a postal article referred to in sub-section (1).

(3) A person shall not, without lawful authority or excuse, use, have in his possession or dispose of any paper or article that has affixed to it, or printed on it, a mark resembling, or apparently intended to resemble or pass for, a postage stamp issued by the Commission, knowing that it is not a postage stamp so issued.

(4) A person shall not, without lawful authority or excuse, use, have in his possession or dispose of any article resembling, or apparently intended to resemble or pass for, a postal article referred to sub-section (1), knowing that it is not such a postal article.

(5) A person shall not, without lawful authority, make, or have in his possession, any die, plate or instrument capable of making an impression in the form of, or in a form resembling, or apparently intended to resemble or pass for, a postage stamp of a kind issued by the Commission or a design of a kind impressed or printed on postal articles referred to in sub-section (1).

(6) A person shall not utter, knowing it to be forged, a postage stamp or a postal article referred to in sub-section (1).

(7) A person shall be deemed to utter a forged postage stamp or a forged postal article of the kind referred to in sub-section (1) if he tenders or puts it off, or attempts to tender or put it off, or uses or deals with it, or attempts to use or deal with it, or attempts to induce any person to use, deal with, act upon or accept it.

Penalty: Imprisonment for 10 years.

87. A person shall not, without lawful authority or excuse—

(a) knowingly make, use, have in his possession, sell or dispose of paper—

Special
paper for
postage
stamps.

(i) provided for, or used by, the Commission for the purpose of printing postage stamps; or

(ii) resembling, or apparently intended to resemble or pass for, paper provided for, or used by, the Commission for that purpose;

(b) knowingly make, use, have in his possession, sell or dispose of paper—

(i) provided for, or used by, a person other than the Commission for the purpose of printing postage stamps for the Commission; or

(ii) resembling, or apparently intended to resemble or pass for, paper provided for, or used by, a person other than the Commission for that purpose; or

(c) knowingly make, use, have in his possession, sell or dispose of any instrument or thing for making a mark resembling, or apparently intended to resemble or pass for, any distinctive mark used on any paper especially provided for the purpose of the printing of postage stamps by or on behalf of the Commission.

Penalty: Imprisonment for 4 years.

88. (1) A person shall not, with intent to defraud—

(a) remove from a postal article sent by post any postage stamp affixed to the article;

Fraudulently
removing
stamps.

(b) remove from a postage stamp that has previously been used any postmark made on the stamp; or

(c) use for postal purposes a postage stamp that has previously been used for postal purposes or has been obliterated or defaced.

Penalty: Imprisonment for 1 year.

(2) In any proceedings for an offence against paragraph (1) (c), proof that the person charged with the offence caused the postal article to be posted is *prima facie* evidence that he used the stamp affixed to the postal article for postal purposes.

89. Where—

(a) a person finds a postal article which appears to be in the course of the post or to have been lost in the course of the post or of delivery to the post; or

Retaining or
secreting
postal
articles.

(b) a postal article is wrongly delivered to a person by or on behalf of the Commission,

the person shall not wilfully retain, secrete, keep or detain the article.

Penalty: Imprisonment for 2 years.

Improperly
obtaining
postal
articles.

90. A person shall not, by a false pretence or false statement, obtain delivery of a postal article sent by post, being an article that is not addressed to that person.

Penalty: Imprisonment for 5 years.

Wrongful
delivery of
postal
articles.

91. An officer or employee of the Commission, a contractor to the Commission or an officer or employee of such a contractor shall not wilfully deliver a postal article sent by post to a person other than the person to whom it is addressed or his authorized agent.

Penalty: \$1,000.

Stealing
postal
articles.

92. (1) A person shall not—

- (a) with intent to defraud, take from the possession of an officer or employee of the Commission, a contractor to the Commission or an officer or employee of such a contractor;
- (b) with intent to defraud, take from any place appointed by the Commission for the receipt or delivery of postal articles; or
- (c) steal, fraudulently misappropriate, convert to his own use, secrete or destroy,

any mail, any postal article in the course of the post or any part of such a postal article.

(2) A person shall not receive any mail, any postal article sent by post or any part of such an article knowing that the mail, the article, or the part of the article, as the case may be, had been fraudulently taken, stolen, misappropriated or secreted.

Penalty: Imprisonment for 7 years.

Tampering
with the
mail.

93. A person shall not—

- (a) open any mail or any postal article in the course of the post unless he is authorized to do so by the Commission or by the addressee; or
- (b) with intent to defraud, open or tamper with any mail or any postal article in the course of the post and addressed to another person.

Penalty: Imprisonment for 2 years.

Obstructing
conveyance
of mail.

94. A person shall not wilfully obstruct or hinder the conveyance or delivery by or on behalf of the Commission of any mail or postal article.

Penalty: Imprisonment for 1 year.

Obstructing
officers.

95. (1) A person shall not assault or wilfully obstruct an officer or employee in the execution of his duty.

Penalty: Imprisonment for 2 years.

(2) A person shall not, while in or upon any premises used in connexion with the performance of its functions, behave in a disorderly

manner or obstruct or hinder the doing, by or on behalf of the Commission, of any act or thing that the Commission is authorized by this Act to do, including the provision of any service that the Commission is so authorized to provide.

Penalty: \$200.

(3) An officer or employee who has reasonable grounds for believing that a person is acting in contravention of sub-section (2) may require the person to leave the premises and, if the person refuses or fails to comply with the request, may, with such assistance as he deems necessary, remove the person from that place.

96. (1) A person shall not, without the authority of the Commission, wilfully tamper with, injure, damage or destroy a receptacle or box for the reception of postal articles, a stamp vending machine belonging to the Commission or any notice affixed to property of the Commission. Injury to property of Commission.

Penalty: Imprisonment for 2 years.

(2) A person shall not, without the authority of the Commission, wilfully alter, interfere with or obliterate any writing or marking on a receptacle or box for the reception of postal articles, on a stamp vending machine or on any notice affixed to property of the Commission.

Penalty: \$200.

97. (1) A person shall not put, or cause to be put, into an office of the Commission or a receptacle or box for the reception of postal articles, any fire, match or light, or any filthy, offensive, or noxious material or matter. Offensive substances in postal boxes.

(2) A person shall not commit any nuisance in or against any office of the Commission or any receptacle or box for the reception of postal articles.

Penalty: \$200.

98. A person may, without warrant, arrest another person if he has reasonable grounds to believe that that other person has committed an offence against section 96 or sub-section 97 (1). Arrest without warrant.

99. Where mail is carried to Australia on a vessel or aircraft for delivery in Australia, the master of the vessel, or the person in charge of the aircraft, shall, upon demand by a person authorized by the Commission, deliver the mail or a part of the mail to which the demand relates to that person or in accordance with his directions. Delivery of mail from vessels and aircraft.

Penalty: Imprisonment for 2 years.

100. Except with the approval of the Commission and upon compliance with such conditions as are determined by the Commission, a person shall not send by post a postal article that encloses or contains an explosive, dangerous, or deleterious substance. Sending explosives through the post.

Penalty: Imprisonment for 10 years.

PART VIII—MISCELLANEOUS

Super-
annuation.

101. (1) The Commission is an approved authority for the purposes of the *Superannuation Act* 1922-1974.

(2) For the purposes of sub-sections 4 (3A) and (4) of that Act, the Managing Director, the Chief General Manager and any person appointed as a full-time Chairman of a Promotions Appeal Board shall each be taken to be a person who is required, by the terms of his appointment, to give the whole of his time to the duties of his office.

(3) For the purposes of sections 145 and 146 of that Act, the Managing Director, the Chief General Manager and any person appointed as a full-time Chairman of a Promotions Appeal Board shall each be deemed to be employed by the Commission.

(4) For the purposes of that Act, the termination of the appointment—

(a) of the Managing Director under section 30;

(b) of the Chief General Manager under section 36; or

(c) of a full-time Chairman of a Promotions Appeal Board,

by reason of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

(5) Nothing in this Act authorizes the provision of superannuation benefits for a person appointed or employed under this Act otherwise than under the *Superannuation Act* 1922-1974.

Annual
report.

102. (1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations during the financial year ended on that date together with a Balance Sheet and other financial statements in respect of that year in such form as the Treasurer approves.

(2) Before furnishing financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

(a) whether the statements are based on proper accounts and records;

(b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the affairs of the Commission;

(c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and

- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause the report and the financial statements together with the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(4) The first report and financial statements to be prepared by the Commission under this section shall relate to the period commencing on the commencing date and ending on 30 June 1976.

103. (1) The Commission shall, upon request by the Minister, furnish to the Minister such reports, documents and information concerning its operations as the Minister specifies. Further reports.

(2) The Commission shall, at all times, keep the Minister informed concerning the operations of the Commission.

104. (1) Proceedings do not lie against the Commission, an officer or employee of the Commission, a person acting for or on behalf of the Commission under a contract with the Commission or an employee of such a person in respect of any loss or damage suffered by a person by reason of any default, delay, error, omission or loss in the receipt, transmission or delivery of postal articles or of money by post or of articles transmitted by the courier service. Protections from actions.

(2) Where money transmitted by post is paid to the person applying for payment of the money, the Commission is not liable to any person in respect of the payment of those moneys unless the officer or employee making payment of the moneys is guilty of fraud or wilful misbehaviour in connexion with the payment of the moneys.

(3) A reference in this section to the receipt, transmission or delivery of postal articles includes a reference to any dealing with postal articles in a manner provided for by the regulations or the By-laws.

105. (1) An offence against this Act, other than an offence that may, apart from this section, be dealt with summarily, may be prosecuted summarily or upon indictment or, where the law of the State or Territory in which the proceedings are brought makes provision for an offender who pleads guilty to a charge to be dealt with by the court otherwise than on indictment, the court may deal with the offender in accordance with that law. Offences—how dealt with.

(2) Nothing in sub-section (1) renders the offender liable to be punished more than once for an offence.

(3) Where proceedings for an offence against this Act are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or with the consent of the defendant and of the prosecutor may, if the court is satisfied

that it is proper to do so, determine the proceedings summarily, but the court shall not impose a penalty exceeding a fine of \$1,000 or imprisonment for a period exceeding 6 months in respect of the offence.

(4) In this section a reference to an offence against this Act includes a reference to an offence against the regulations or the By-laws.

Reward for information as to damage to property.

106. Where the Commission learns, as a result of information furnished to the Commission by a person, the identity of a person who has wilfully destroyed, damaged, defaced, removed or interfered with property belonging to, or under the control of, the Commission, the Commission may pay to that first-mentioned person, by way of reward, a sum determined by the Commission but not exceeding \$100 or such higher amount as may be prescribed by the regulations.

Unclaimed moneys.

107. (1) Where moneys received by the Commission for transmission to a person have remained unclaimed for a period of 1 year after the moneys become payable to that person, the moneys shall be paid by the Commission into an account kept by the Commission to be called the Unclaimed Moneys Fund.

(2) Notwithstanding the payment of moneys into the Unclaimed Moneys Fund, the Commission shall, upon being satisfied while the moneys are in that Fund that a person is entitled to the payment of the moneys or a part of the moneys, pay an amount equal to the amount of those moneys or of that part to that person out of that Fund and the receipt by him of that amount is a good discharge to the Commission in respect of those moneys or that part of those moneys.

(3) Where moneys have remained in the Unclaimed Moneys Fund for a period of 5 years, the moneys shall be paid out of the Unclaimed Moneys Fund into the Consolidated Revenue Fund.

(4) Where moneys have been paid out of the Unclaimed Moneys Fund in accordance with sub-section (3), the Commission ceases to be liable to make any payments to any person in respect of the moneys or the matter to which the moneys relate but, if the Treasurer is satisfied that special reasons exist for doing so, the Treasurer may nevertheless make a payment to a person who satisfies the Treasurer that he is entitled to a payment in respect of those moneys or of such a matter.

Postal articles deemed to be property of the Commission.

108. For the purpose of any legal proceedings with respect to and for the purpose of any prosecution for an offence with respect to any mail or to a postal article sent by post or under the control of the Commission, the mail or postal article shall be deemed to be, while in the post or under the control of the Commission, the property of the Commission.

109. (1) Where judgment has been given by a court against an officer or employee for the payment of a sum of money, the person in whose favour the judgment is given may serve on the Commission a copy of the judgment, certified under the hand of the registrar or other proper officer of the court, and a statutory declaration stating that the judgment has not been satisfied by the judgment debtor and setting out the amount due under the judgment by the judgment debtor. Attachment of salaries.

(2) Upon the service on it of a judgment and a statutory declaration in accordance with this section, the Commission shall, as soon as practicable, notify the judgment debtor in writing of the service of the copy of the judgment and the statutory declaration and require him to state in writing, within the time specified in the notice, whether the judgment has been satisfied and, if it has been satisfied, to furnish evidence showing that it has been satisfied or, if the judgment has not been satisfied, to state the amount then due under the judgment.

(3) If the judgment debtor fails to satisfy the Commission, within the time specified in the notice given under sub-section (2), that the judgment has been satisfied, the Commission may, from time to time, deduct from any moneys due to the judgment debtor such sums as appear to the Commission to be necessary to enable the judgment to be satisfied, or may direct the deduction therefrom of such sums, and shall pay, or direct the payment of, those sums to the judgment creditor.

(4) The Commission shall not, at any time, make a deduction, or direct a deduction, that would reduce the amount to be received by the judgment debtor to less than one-third of the amount that would, but for the provisions of this section, be payable to the judgment debtor.

(5) Where more than one judgment and statutory declaration are served on the Commission in respect of a particular judgment debtor, the judgments shall be satisfied in the order in which copies of the judgments are served upon the Commission.

(6) A payment made to the judgment creditor in pursuance of this section shall, as between the Commission and the judgment debtor, be deemed to be a payment by the Commission to the judgment debtor.

(7) A person to whom a payment has been made in pursuance of this section shall notify the Commission immediately a judgment in respect of which a payment was made is satisfied.

Penalty: \$100 or imprisonment for 3 months.

(8) If a payment made in pursuance of this section exceeds the amount due under the judgment, the excess is repayable by the judgment creditor to the judgment debtor and, in default of payment, is recoverable by the judgment debtor from the judgment creditor as a debt in a court of competent jurisdiction.

(9) Where the Commission is satisfied that the estate of an officer or employee has been sequestrated, either voluntarily or compulsorily, for the benefit of his creditors, and that he has not been discharged from bankruptcy, this section does not apply in relation to the officer or employee.

Con-
tributions
towards the
provision of
special
services or
facility.

110. (1) Where a person (including Australia, a State and an authority of Australia or a State) applies to the Commission for the provision of postal services of a special kind or in special circumstances, or for the provision of a special facility, the Commission may enter into an agreement with the person with respect to the provision of the services or facility under which the person agrees—

- (a) to make a contribution towards the cost of providing the service or facility;
- (b) to render other assistance to the Commission for the purpose of facilitating the provision of the service or facility; or
- (c) to indemnify the Commission against any loss the Commission may suffer by reason of the provision of the service or facility.

(2) An agreement referred to in sub-section (1) may provide for the person to advance to the Commission an amount on account of the cost of providing the service or facility upon such terms and conditions as to the repayment of the whole or a part of the advance as are specified in the agreement.

Payment of
tolls, &c.

111. (1) Where—

- (a) the Commission enters, either with or without a vehicle or horse, onto premises, being a pier, wharf, quay, landing place, bridge, ferry or part of a road, or uses premises, being a pier, wharf, quay or landing place, in connexion with the performance of its functions; and
- (b) a toll, fee or charge would, but for this section, be payable in respect of the entry onto the premises or the use of the premises, as the case may be,

the toll, fee or charge is not payable by the Commission or any other person in respect of the entry onto the premises, or the use of the premises, but the Commission is liable to pay to the owner or occupier of the premises, in respect of all entries by the Commission onto the premises, or in respect of all uses of the premises, during a period of 12 months, or such shorter period as is agreed upon between the Commission and the owner or occupier, such sum as is agreed upon by the Commission and the owner or occupier or, in the absence of agreement, as is determined by arbitration in accordance with the provisions of an Act of the State or an Ordinance of the Territory in which the premises are situated relating to the settlement of commercial disputes by arbitration.

(2) This section does not apply to a toll, fee or charge that amounts to taxation.

(3) In this section—

- (a) a reference to entry by the Commission onto premises in connexion with the performance of its functions includes a reference to the entry onto premises—
 - (i) of an officer or employee in the course of performing his duties; and
 - (ii) of a person engaged on behalf of the Commission in the conveyance of mail or postal articles for purposes connected with the conveyance of mails or postal articles;
- (b) a reference to the use of premises by the Commission in connexion with the performance of its functions includes a reference to the use of premises by a person acting on behalf of the Commission in connexion with the performance of its functions; and
- (c) a reference to the owner or occupier of premises, being a part of a road, is a reference to the person entitled to be paid a toll, fee or charge for entry onto that part of the road.

112. The Commission may, upon such conditions as it thinks fit—

Grants of
financial
assistance.

- (a) grant financial and other assistance to any society, institution or other body for the purpose of assisting that body to provide educational, social, sporting or recreational facilities for officers or employees;
- (b) provide scholarships, fellowships or endowments for officers and employees and for other persons engaged in research in relation to postal services; and
- (c) provide financial assistance to societies, institutions and bodies engaged in research in relation to postal services or in the collection and dissemination of information with respect to any such research.

113. (1) There is hereby established a Consultative Council comprising representatives of the Commission and of organizations of officers and employees.

Consultative
Council.

(2) The By-laws shall determine the manner in which the Council is to be constituted, the functions of the Council and the manner in which the Council is to carry out its functions.

114. The Commission may, in a particular case for special reasons, or in cases included in a particular class of cases for special reasons remit or reduce a charge that would otherwise be payable under this Act.

Remission of
charges.

115. (1) The Commission may make By-laws, not inconsistent with this Act or the regulations, prescribing all matters which are required or permitted to be prescribed by the By-laws, and, making provision for or with respect to—

By-laws.

- (a) the establishment, management and operation of offices, the receipt, transmission and delivery of postal articles, and the conduct and duties of officers and employees;
- (b) the terms and conditions governing the receipt, transmission and delivery of postal articles;
- (c) the weight and dimensions of postal articles;
- (d) the registration and insurance of postal articles;
- (e) the registration of publications;
- (f) the sale of postage stamps, the licensing of persons to sell stamps and the commission to be allowed to persons so licensed;
- (g) the conditions governing the refund of postage;
- (h) unclaimed, undelivered or refused postal articles;
- (i) the redirection of postal articles, and the return of postal articles to senders;
- (j) the mode of defacing or cancelling stamps on postal articles;
- (k) the payment of compensation in respect of the loss or rifling of, damage to, or delay in delivery of postal articles;
- (l) the provision of private boxes, private bags, community bags and free bags;
- (m) the terms and conditions governing the transmission of moneys through the post;
- (n) the sale of stationery and packing material;
- (o) the conditions governing philatelic sales and services;
- (p) the establishment, management and operation of the courier service;
- (q) the terms and conditions of employment of officers and employees; and
- (r) penalties by way of fine not exceeding \$200 or by way of imprisonment not exceeding 6 months, or both, for a breach of a By-law.

(2) By-laws shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act* 1903-1973.

(3) Sections 48 and 49 of the *Acts Interpretation Act* 1901-1973 apply to By-laws in like manner as they apply to regulations.

Regulations.

116. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed by the regulations, or which are necessary or convenient to be prescribed by the regulations for carrying out or giving effect to this Act and for making provision for and in relation to—

- (a) the forfeiture to Australia of any postal article, or of the contents of any postal article, that has been dealt with as provided in the By-laws but cannot be delivered to the addressee or returned to the sender or any article the transmission of which through the

post is prohibited by or under this Act or any other Act or by the By-laws;

- (b) arrangements as to the collection of duties of customs or any other duties lawfully payable in respect of goods transmitted by post;
- (c) methods of dealing with postal articles that may contain goods on which duties of customs are payable;
- (d) the application of Division 6 of Part V to and in relation to an employee who—
 - (i) has been in continuous employ of the Commission for a period of not less than one year; or
 - (ii) has been engaged by the Commission to serve for a period of not less than one year,including provisions modifying and adapting the provisions of that Division in relation to such an employee;
- (e) the preservation of specified existing and accruing rights by a person appointed to the office of Managing Director, Chief General Manager or full-time Chairman of a Promotions Appeal Board or by a person appointed or deemed to have been appointed as an officer who was, immediately before he was so appointed, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1975* applied, including provisions modifying and adapting the *Public Service Act 1922-1975* for the purpose of enabling such a person to apply for promotion to an office in the Australian Public Service or appeal against a promotion to an office in that Service;
- (f) procedures for and in relation to the opening and examination of postal articles by or in the presence of officers;
- (g) prohibiting, restricting, regulating or imposing conditions with respect to the sending by post or by the courier service of—
 - (i) articles that are or could be dangerous or noxious;
 - (ii) articles consisting of, containing or bearing matter of an indecent, obscene or offensive nature; and
 - (iii) articles consisting of or containing matter not solicited by the persons to whom the articles are sent;
- (h) the payment of costs in proceedings before a Disciplinary Appeal Board and the assessment of those costs; and
- (j) penalties not exceeding a fine of \$200 or imprisonment not exceeding 6 months, or both, for offences against the regulations.

NOTE

1. Act No. 54, 1975; assented to 12 June 1975.