**PUBLIC SERVICE AMENDMENT ACT 1976**

**No. 193 of 1976**

An Act to amend the *Public Service Act* 1922.

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

**Short title, &c.**

**1.** (1) This Act may be cited as the *Public Service Amendment Act* 1976.

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

**Commencement.**

**2.** (1) Section 3 shall be deemed to have come into operation on 16 September 1975.

(2) The remaining provisions of this Act shall come into operation on the day on which it receives the Royal Assent.

**Recognition of prior service.**

**3.** Section 47e of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:—

“(2) Where a person to whom this sub-section applies was, during a period (in this sub-section referred to as the ‘relevant period’) that commenced on 16 September 1975, employed continuously in—

(a) a service referred to in paragraph (a) or (b) of sub-section (4); or

(b) 2 or more of the services referred to in paragraphs (a), (b) and (c) of sub-section (4), in succession,

the person shall, for the purposes of sub-section (1), be deemed to have been continuously in the service of a public employer during the period, or during each of the periods, during which he was, during the relevant period, employed in a service referred to in paragraph (a) or (b) of sub-section (4).

“(3) Sub-section (2) applies to a person who is an officer of the Australian Public Service and was, immediately before 16 September 1975, employed in—

(a) the service of Papua New Guinea;

(b) the service of a body (not being an incorporated company, society or association) established for a public purpose by or under a law of Papua New Guinea; or

(c) the service of the Commonwealth as a member of the Australian Staffing Assistance Group.

“(4) For the purposes of sub-section (2), the services are—

(a) the service of the Independent State of Papua New Guinea;

(b) the service of a body (not being an incorporated company, society or association) established for a public purpose by or under a law of the Independent State of Papua New Guinea; or

(c) the service of the Commonwealth in respect of the Australian Staffing Assistance Group.

“(5) In this section—

‘Australian Staffing Assistance Group’ means the body established under that name by the *Papua New Guinea* (*Staffing Assistance*) *Act* 1973;

‘authority of the Commonwealth or of a State or Territory’ means a body corporate (not being an incorporated company, society or association) incorporated for a public purpose by or under a law of the Commonwealth or of a State or Territory;

‘Papua New Guinea’ has the same meaning as it had in the *Papua New Guinea Act* 1949 as in force on 15 September 1975;

‘public employer’ means the Commonwealth, a State or a Territory or an authority of the Commonwealth or of a State or Territory.”.

**Payment to female officer on retiring on marriage.**

**4.** Section 54c of the Principal Act is amended—

(a) by omitting paragraph (a) of sub-section (1) and substituting the following paragraph: —

“(a) has continued in the Service for not less than 5 years but less than 10 years;”;

(b) by omitting from paragraph (c) of sub-section (1) the words “under section 74” and substituting the words “under section 17 of the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976”;

(c) by omitting paragraphs (e), (f) and (g) of sub-section (1) and substituting the following paragraphs:—

“(e) where the period of her service is not less than 5 years but is less than 8 years—an amount equal to her salary for 1 month; or

(f) where the period of her service is not less than 8 years but is less than 10 years—an amount equal to her salary for 2 months.”; and

(d) by omitting from sub-section (2) the word and figures “section 74” and substituting the words “the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976”.

**5.** Section 68c of the Principal Act is repealed and the following section substituted: —

**Payment to dependants on death.**

“68c. (1) Where—

(a) an officer dies; or

(b) the Board has directed, after consideration of all the circumstances, that an officer shall be presumed to have died on a particular date,

this section applies in relation to the officer.

“(2) Where this section applies in relation to an officer—

(a) the Chief Officer—

(i) may authorize payment to a dependant of the officer of an amount (in this sub-section referred to as the ‘relevant amount’) equal to the amount, or the sum of the amounts, (if any) that could have been authorized to be paid to the officer under section 68b if he had ceased to be an officer otherwise than by death on the day on which he died or is presumed to have died; or

(ii) may authorize payments to 2 or more dependants of the officer of amounts aggregating the relevant amount;

(b) if the Chief Officer has not authorized a payment or payments under paragraph (a), he may authorize payment of an amount equal to the relevant amount to the legal personal representative of the officer; and

(c) if the Chief Officer has not authorized a payment under paragraph (a) or (b) within 12 months after the death of the officer or, if the Board gave a direction in relation to the officer under paragraph (b) of sub-section (1), within 12 months after the date on which it gave that direction, he shall authorize payment of an amount equal to the relevant amount to the legal personal representative of the officer.

“(3) Where there are 2 or more dependants of an officer to whom this section applies, the Chief Officer shall, in exercising the powers conferred on him by paragraph (2)(a), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the officer.

“(4) Where an amount is payable under this section to a person who is under a legal disability, the Chief Officer may, instead of authorizing payment of the amount to the person, authorize payment of the amount to such trustee or trustees as the Board appoints to be held by that trustee or those trustees upon such trusts for the benefit of the person as the Board directs and, when the amount is paid to that trustee or to those trustees accordingly, the amount shall, for the purposes of this section, be deemed to have been paid to the person.

“(5) Where, upon the death of an officer to whom this section applies, the amount payable under this Act in relation to his death would be *bona vacantia,* this Act does not authorize that amount to be paid in relation to the officer.”.

**Interpretation.**

**6.** Section 68f of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “salary”; and

(b) by adding to the end thereof the following sub-sections:—

“(3) The regulations may provide that allowances of a specified kind are to be included in salary for the purposes of sections 68 to 68e (inclusive).

“(4) The regulations may prescribe the conditions subject to which, or specify the extent to which, payments in accordance with a section referred to in sub-section (3) are to include amounts by way of, or in respect of, an allowance of a kind specified in the regulations referred to in that sub-section, including conditions having effect after the time at which leave of absence commences.”.

**Board to determine whether period of leave without pay under section 69, 70, 71, 71a or 72a to count as service.**

**7.** Section 72aa of the Principal Act is amended—

(a) by inserting in sub-section (1), after the words “for any purpose”, the words “of this Act or of any other Act”; and

(b) by adding at the end of sub-section (2) the words “of this Act or of any other Act”.

**Repeal.**

**8.** (1) Sections 73, 74 and 75 of the Principal Act are repealed.

(2) The repeal effected by sub-section (1) does not prevent—

(a) the giving, under section 73 or 74 of the Principal Act, of a direction that the death of a person is to be presumed to have occurred on a date before the commencement of this Act; or

(b) the making, under the Principal Act, of any payment that could have been made if the direction had been given before the commencement of this section.

**Furlough rights of certain former officers of the Northern Territory Public Service.**

**9.** Section 75a of the Principal Act is amended by omitting paragraph (a) of sub-section (2) and substituting the following paragraph:—

“(a) by applying the provisions of the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976; or”.

**Furlough.**

**10.** Section 81k of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:—

“(2) Where a State employee has, whether before or after the commencement of this sub-section, been granted furlough or pay in lieu of furlough as provided in sub-section (1), or has, before being so appointed or employed, been granted furlough or pay in lieu of furlough under the law referred to in that sub-section, the period of the furlough so granted, or the period in respect of which pay is or was granted, as the case may be, shall be deducted from any period of leave for which he is eligible or in respect of which payment may be authorized under the provisions of the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976.

“(2a) Where such a State employee—

(a) has, before the commencement of this sub-section, been granted furlough or pay in lieu of furlough under this Act or under the *Commonwealth Employees’ Furlough Act* 1943; or

(b) is, after the commencement of this sub-section, granted long service leave or pay in lieu of long service leave under the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976,

the period of the leave so granted, or the period in respect of which the pay is granted, as the case may be, shall be deducted from any period of furlough for the grant of which he is entitled or eligible, or from any period in respect of which he is entitled to or eligible for pay in lieu of furlough, under sub-section (1).”.

**Furlough.**

**11.** Section 81v of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:—

“(2) Where a State employee has, whether before or after the commencement of this sub-section, been granted furlough or pay in lieu of furlough as provided in sub-section (1), or has, before being so appointed or employed, been granted furlough or pay in lieu of furlough under the law referred to in that sub-section, the period of the furlough so granted, or the period in respect of which pay is or was granted, as the case may be, shall be deducted from any period of leave for which he is eligible or in respect of which payment may be authorized under the provisions of the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976.

“(2a) Where a State employee—

(a) has, before the commencement of this sub-section, been granted furlough or pay in lieu of furlough under this Act or under the *Commonwealth Employees’ Furlough Act* 1943; or

(b) is, after the commencement of this sub-section, granted long service leave or pay in lieu of long service leave under the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976,

the period of the leave so granted, or the period in respect of which the pay is granted, as the case may be, shall be deducted from any period of furlough for the grant of which he is entitled or eligible, or from any period in respect of which he is entitled to or eligible for pay in lieu of furlough, under sub-section (1).”.

**Appointment of ex-employees of Melbourne Harbour Trust to Government Service.**

**12.** Section 81zg of the Principal Act is amended by omitting from sub-section (4) the words “sections 73, 74 and 75 of this Act” and substituting the words “the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976”.

**Schedules 2 and 3.**

**13.** Schedules 2 and 3 to the Principal Act are repealed and the Schedules set out in Schedule 1 substituted.

**Additional amendments.**

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

**Transitional provisions.**

**15.** (1) The repeal of sections 73, 74 and 75 of the Principal Act does not affect a grant, before the commencement of this section, of leave of absence under any of those sections for a period commencing after, or extending after, the commencement of this section, and the *Long Service Leave* (*Commonwealth Employees*) *Act* 1976 applies to and in relation to leave of absence so granted that occurs after the commencement of this section as if it had been granted under that Act.

(2) Where a payment to a dependant, or payments to 2 or more dependants, of an officer who died, or is, by virtue of a direction given by the Public Service Board, presumed to have died, on or after 1 January 1973 and before the commencement of this section had not been authorized before the commencement of this section under section 68c of the Principal Act as in force at any time before the commencement of this section—

(a) notwithstanding the repeal of section 68c of the Principal Act effected by section 5 of this Act, the Chief Officer—

(i) may authorize payment to a dependant of the officer of an amount (in this sub-section referred to as the “relevant amount”) equal to the amount, or the sum of the amounts, (if any) that could have been authorized to be paid to the officer under section 68b of the Principal Act on the day on which he died or is presumed to have died if he had ceased to be an officer otherwise than by death on that day; or

(ii) may authorize payments to 2 or more dependants of the officer of amounts aggregating the relevant amount;

(b) if the Chief Officer has not authorized a payment or payments under paragraph (a), he may authorize payment of an amount equal to the relevant amount to the legal personal representative of the officer; and

(c) if the Chief Officer has not authorized a payment under paragraph (a) or (b) within 12 months after the commencement of this section, he shall authorize payment of an amount equal to the relevant amount to the legal personal representative of the officer.

(3) Where there are 2 or more dependants of an officer referred to in sub-section (2), the Chief Officer shall, in exercising the powers conferred on him by paragraph (2)(a), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the officer.

(4) Regulation 62 of the Public Service Regulations as in force immediately before the commencement of this section continues in force after the commencement of this section for the purposes of section 68f of the Principal Act as amended by this Act as if references in it to section 73 or 74 of the Principal Act were references to section 68f of the Principal Act as so amended, but that regulation may be repealed or amended by regulations made under the Principal Act as so amended.

SCHEDULE 1 Section 13

SCHEDULES INSERTED IN PRINCIPAL ACT

SCHEDULE 2 Sections 7 and 10

DEPARTMENTS

The Department of the Senate

The Department of the House of Representatives

The Department of the Parliamentary Library

The Department of the Parliamentary Reporting Staff

The Joint House Department

The Department of Aboriginal Affairs

The Department of Administrative Services

The Attorney-General’s Department

The Department of Business and Consumer Affairs

The Department of the Capital Territory

The Department of Construction

The Department of Defence

The Department of Education

The Department of Employment and Industrial Relations

The Department of Environment, Housing and Community Development

The Department of Finance

The Department of Foreign Affairs

The Department of Health

The Department of Immigration and Ethnic Affairs

The Department of Industry and Commerce

The Department of National Resources

The Department of the Northern Territory

The Department of Overseas Trade

The Postal and Telecommunications Department

The Department of Primary Industry

The Department of the Prime Minister and Cabinet

The Department of Productivity

The Department of Science

The Department of Social Security

The Department of Transport

The Department of the Treasury

The Department of Veterans’ Affairs

SCHEDULE 3 Section 25

PERMANENT HEADS OF DEPARTMENTS

The Clerk of the Senate

The Clerk of the House of Representatives

The Parliamentary Librarian

The Principal Parliamentary Reporter

The Secretary of the Joint House Department

The Secretary to the Department of Aboriginal Affairs

The Secretary to the Department of Administrative Services

The Secretary to the Attorney-General’s Department

The Secretary to the Department of the Capital Territory

The Secretary to the Department of Construction and Director-General of Works

The Comptroller-General of Customs

The Secretary to the Department of Defence

The Secretary to the Department of Education

The Secretary to the Department of Employment and Industrial Relations

The Secretary to the Department of Environment, Housing and Community Development

The Secretary to the Department of Finance

The Secretary to the Department of Foreign Affairs

The Director-General of Health

The Secretary to the Department of Immigration and Ethnic Affairs

The Secretary to the Department of Industry and Commerce

The Secretary to the Department of National Resources

The Secretary to the Department of the Northern Territory

The Secretary to the Department of Overseas Trade

The Secretary to the Postal and Telecommunications Department

The Secretary to the Department of Primary Industry

The Secretary to the Department of the Prime Minister and Cabinet

The Secretary to the Department of Productivity

The Secretary to the Department of Science

The Director-General of Social Services

The Secretary to the Department of Transport

The Secretary to the Department of the Treasury

The Secretary to the Department of Veterans’ Affairs

SCHEDULE 2 Section 14

ADDITIONAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting the word “Australia “(wherever occurring) and substituting the words “the Commonwealth”:—

10a(1)(a) and (c), 11(7), 15(2), 47c(1)(a)(i), 55(1)(h), 62(1), 64(5), 66, 68e(1)(a), 71(1)(b)(ii), (iii) and (iv), 72(1)(b), 72b(1) and (4), 78(1) and (2)(a), 81, 81a, 81e(1), 81q(1), 81w, 81zg(6), 82b(1), 86, 89(1), 91(1)(e) and (3)(b), 91a(1) and 94(2) and (3).

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

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| Provision | Amendment |
| Section 76(3)  | Omit “in the public offices of Australia, or in any part thereof,”, substitute “in Commonwealth public offices throughout Australia or in a part of Australia”. |
| Section 76(4)  | Omit “in the public offices of Australia or in any part thereof”, substitute “in Commonwealth public offices throughout Australia or in a part of Australia”. |
| Section 81zm(1)  | (a) Omit the definition of “Australian authority”. |
|  | (b) After the definition of “authority of a State” insert the following definition:— |
|  | “‘authority of the Commonwealth’ means an authority established or constituted for a public purpose by or under a law of the Commonwealth or of an internal Territory;”. |
| Section 81zn(1)  | Omit “Australian authority” (wherever occurring), substitute “authority of the Commonwealth”. |
| Section 81zn(2)  | Omit “Australian authority”, substitute “authority of the Commonwealth”. |