

# PUBLIC SERVICE AMENDMENT (FIRST DIVISION OFFICERS) ACT 1976

No. 6 of 1977

An Act relating to Appointments to the First Division of the Australian Public Service.

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

Short title.        1. This Act may be cited as the *Public Service Amendment (First Division Officers) Act 1976*.<sup>1</sup>

Commence-  
ment.            2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

3. Section 54 of the *Public Service Act 1922*<sup>2</sup> is repealed and the following sections are substituted:—

Appoint-  
ments to  
First  
Division.        “54. (1) In this section and section 54A—  
‘appointment’ includes re-appointment, and cognate expressions have corresponding meanings;  
‘Chairman’ means Chairman of the Board and includes a person acting as the Chairman of the Board;  
‘established candidate’, in relation to a vacancy in an office of Permanent Head, means a person who—  
    (a) has been nominated by the Chairman, or by a Committee, in accordance with the procedures prescribed by section 54A, as being suitable for appointment to fill that vacancy;  
    (b) not being a person mentioned in paragraph (a), holds another office of Permanent Head other than an office to which he was appointed in accordance with sub-section (8); or  
    (c) not being a person mentioned in paragraph (a) or (b), has at any previous time or times held an office of Permanent Head, other than an office to which he was appointed in accordance with sub-section (8), and has continued to be an officer of the Service since he ceased, or last ceased, so to hold an office of Permanent Head;  
‘office of Permanent Head’ does not include an office to or in relation to which section 9 applies.

“(2) For the purposes of this section, a person shall be taken to have been a permanent officer of the Service at any relevant time if—

(a) the person—

(i) held an office in the Service at that time other than an office to which he had been appointed in accordance with sub-section (8); or

(ii) was an unattached officer at that time; or

(b) the person—

(i) had held an office in the Service during any period that ended before that time other than an office to which he had been appointed in accordance with sub-section (8); or

(ii) had been an unattached officer during such a period, and the person continued to be an officer of the Service from the expiration of that period, or, if there was more than one such period, the expiration of the last such period, until the relevant time.

“(3) Every appointment to an office in the First Division shall be made by the Governor-General but shall be so made—

(a) in the case of an appointment to an office of Permanent Head—in accordance with the recommendation of the Prime Minister; or

(b) in any other case—subject to section 9, on the recommendation of the Prime Minister and in accordance with the advice of the Board.

“(4) Before an appointment is made to fill a vacancy that has occurred, or is about to occur, in an office of Permanent Head—

(a) the procedures prescribed by section 54A shall be followed; and

(b) any recommendation made to the Governor-General by the Prime Minister for the appointment of a person to fill that vacancy shall state whether or not the person is an established candidate in relation to that vacancy.

“(5) Where a person is appointed to an office of Permanent Head—

(a) the instrument of appointment shall state that the Prime Minister has informed the Governor-General that the person was, or was not, as the case may be, an established candidate; and

(b) as soon as practicable after the appointment is made—

(i) a copy of the instrument of appointment shall be published in the *Gazette*; and

(ii) a copy of the instrument of appointment shall be furnished to the person appointed.

“(6) In any proceeding, a statement in the instrument of appointment of a person to fill a vacancy in an office of Permanent Head that the Prime Minister has informed the Governor-General that the person was, or was not, an established candidate is *prima facie* evidence that the person was, or was not, as the case may be, an established candidate in relation to that vacancy.

“(7) The following provisions of this section apply only where a person to be appointed to fill a vacancy in an office of Permanent Head after the commencement of this section is not an established candidate in relation to that vacancy.

“(8) The person shall be appointed to hold office for such period, not exceeding 5 years and not extending beyond the date on which he will attain the age of 65 years, as is specified in the instrument of his appointment but, subject to this section, he is eligible for re-appointment.

“(9) The Governor-General may, before the expiration of the period for which the person is appointed to hold office, terminate the appointment of the person on the recommendation of the Prime Minister if the Prime Minister who makes the recommendation is not a member of—

- (a) the political party of which the Prime Minister on whose recommendation the person was appointed was a member at the time when the person was appointed; or
- (b) a political party of which any other person who held office as a Minister at that time was then a member.

“(10) Except in the case of a person who is a permanent officer of the Service immediately before his appointment takes effect, the Governor-General may, at the time when the appointment is made, on the recommendation of the Prime Minister, by instrument under his hand determine that, if the appointment—

- (a) is terminated under sub-section (9) before the expiration of the period for which the person is appointed; or
- (b) terminates by reason of the abolition of the office held by the person,

the person shall be entitled to such compensation (if any) as is specified in, or ascertained in accordance with, that instrument.

“(11) As soon as practicable after a determination is made under sub-section (10), a copy of the instrument of determination shall be published in the *Gazette*.

“(12) Where the appointment of a person to an office of Permanent Head is terminated under sub-section (9) before the expiration of the

period for which he was appointed or terminates by reason of the expiration of that period or an office of Permanent Head held by a person is abolished, then—

- (a) if he was, immediately before his appointment took effect, a permanent officer of the Service—
  - (i) he shall be deemed to be an unattached officer in such Division (other than the First Division), and of such status and salary, as are determined by the Board having regard to the office (other than an office of Permanent Head) last held by him and the period of his service, or the aggregate of the periods of his service, as a Permanent Head; and
  - (ii) he is entitled to be appointed to an appropriate office in that Division, and of that status and salary, but, if he gives notice in writing to the Board stating that he wishes to retire from the Service, he shall be deemed to be retired from the Service forthwith upon the giving of the notice; and
- (b) if he was not, immediately before his appointment took effect, a permanent officer of the Service, he shall be deemed to be retired from the Service forthwith upon the termination of his appointment or the abolition of his office, as the case may be.

“(13) Where—

- (a) a person is deemed to be retired from the Service by reason of sub-section (12); and
- (b) the person had not attained the age of 60 years before the time when he is deemed to be so retired,

he shall, for the purposes of the *Superannuation Act 1976*, be deemed to have retired involuntarily.

“(14) Section 18 does not apply in relation to the doing of any act by the Governor-General under this section in relation to an office of Permanent Head.

“(15) Nothing in this section affects the operation of Divisions 6 and 7.

“54A. (1) The procedures set out in the following provisions of this section are prescribed for the purposes of section 54.

“(2) Where a vacancy has occurred, or is about to occur, in an office of Permanent Head (in this section referred to as the ‘relevant office’), the Chairman—

- (a) shall prepare a written report nominating persons (whether officers of the Service or not) whom he considers suitable for appointment to fill that vacancy; and

Procedures  
for  
nominating  
persons as  
suitable for  
appointment  
as  
Permanent  
Head.

- (b) shall, after consulting the Prime Minister as to the persons who are to be members of the Committee, by instrument under his hand, appoint a Committee, to be constituted as provided by sub-section (3), to prepare a written report nominating persons (whether officers of the Service or not) whom the Committee considers suitable for appointment to fill that vacancy.

“(3) Subject to sub-section (4), the Committee shall consist of—

- (a) the Chairman; and
- (b) such number (not being less than 2) of other persons, being persons each of whom holds an office of Permanent Head, as the Chairman thinks it desirable to appoint.

“(4) The Chairman may, after consulting the Prime Minister, at any time appoint an additional person or persons (being a person who, or persons each of whom, holds an office of Permanent Head) to be a member or members of the Committee but any such appointment does not affect the validity of anything done by the Committee as constituted before the additional member is, or the additional members are, appointed.

“(5) A member of the Committee other than the Chairman may, at any time, by notice in writing to the Chairman, resign from the Committee.

“(6) The Chairman—

- (a) shall convene such meetings of the Committee as he considers necessary for the proper performance of its functions; and
- (b) shall preside at all meetings of the Committee.

“(7) A quorum at a meeting of the Committee is constituted by the Chairman and such number of other members as, together with the Chairman, constitute at least two-thirds of the total number of members.

“(8) At a meeting of the Committee—

- (a) the procedure to be followed shall, subject to this section, be as determined by the Committee;
- (b) questions arising shall be determined by a majority of the votes of the members present and voting; and
- (c) the Chairman has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

“(9) For the purpose of assisting the Committee in the performance of its functions, the Chairman may consult, or authorize a person on his behalf to consult, such other persons as he considers appropriate for the purpose of ascertaining the names of persons whom the persons consulted consider suitable for appointment to the relevant office, and shall inform the Committee as to the persons consulted and as to the persons

who are considered by the persons consulted to be suitable for appointment to the relevant office.

“(10) A report under this section—

- (a) shall contain a list of the names of persons whom the Chairman or the Committee, as the case may be, considers suitable for appointment to the relevant office; and
- (b) may contain such comments as the Chairman or the Committee, as the case may be, considers relevant.

“(11) The Chairman shall furnish to the Prime Minister and to the Minister (in this section referred to as the ‘Minister concerned’) of the Department of which the holder of the relevant office is the Permanent Head the report prepared by him in accordance with paragraph (2) (a) and the report prepared by the Committee in accordance with paragraph (2) (b).

“(12) The Prime Minister may, after the reports have been furnished in accordance with sub-section (11), require the Chairman to arrange for the publication in the *Gazette*, and in such newspapers or other publications (which may include newspapers or other publications published outside Australia) as the Chairman thinks appropriate, advertisements inviting applications for appointment to the relevant office and the Chairman shall comply with any such requirement.

“(13) If the Prime Minister has required the publication of advertisements in relation to the relevant office as mentioned in sub-section (12), the Chairman and the Committee shall consider whether any persons who make applications in pursuance of the advertisements are suitable for appointment to the relevant office and prepare revised reports accordingly.

“(14) If, after reports have been furnished in accordance with this section, the Prime Minister or the Minister concerned requests the Chairman and the Committee to reconsider their respective reports so as to consider—

- (a) whether a particular person whose name is not, or particular persons whose names are not, specified in the list contained in the report concerned is or are suitable for appointment to the relevant office; or
- (b) whether there are other persons not specified in the list who are suitable for appointment to the relevant office,

the Chairman and the Committee shall comply with the request and, if they think it appropriate to do so, prepare revised reports accordingly.

“(15) If a list of names contained in a report prepared by the Chairman or by the Committee under this section in relation to an office of Permanent Head includes the name of a person who holds another office of Permanent Head, the Chairman or the Committee, as the case may

be, may also prepare a report under sub-section (2) in relation to that other office as if that other office were expected to become vacant and, in the case of the Committee, as if the Committee had been appointed in accordance with that sub-section to prepare a report in relation to that other office.

Acting  
appointments  
to First  
Division.

“54B. (1) Where—

- (a) an officer who occupies an office in the First Division is, or is about to be, absent from duty or from Australia or unavailable to perform the functions and duties of his office; or
- (b) there is a vacancy in such an office,

the Governor-General may appoint an officer to act in the place of the first-mentioned officer during the period of the absence or unavailability or until the filling of the vacancy.

“(2) An appointment under this section by reason of a vacancy in an office shall not be made or continue to have effect after the expiration of a period of 6 months from the date of the occurrence of the vacancy.

“(3) The Governor-General may at any time terminate an appointment made under this section.

“(4) Where an officer is acting in the place of another officer in pursuance of an appointment under this section otherwise than during a vacancy in the office and the office becomes vacant while the first-mentioned officer is so acting, that officer may continue to act until the Governor-General otherwise directs, the vacancy is filled or a period of 6 months from the date of the occurrence of the vacancy expires, whichever first happens.

“(5) While an officer is acting in the place of another officer in pursuance of an appointment under this section, he has, and may exercise, all the powers, and shall perform all the functions and duties, of the holder of the office under this Act or any other law.

“(6) Section 18 does not apply to the making of an appointment under this section in respect of an office of Permanent Head or to the termination of such an appointment.

“(7) The validity of anything done by an officer appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment (not being an appointment in respect of a vacant office) had ceased to have effect.”

**NOTES**

1. Act No. 6, 1977; assented to 28 February 1977.
2. Act No. 21, 1922, as amended. For previous amendments *see* Act No. 46, 1924; No. 41, 1928; No. 49, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; No. 59, 1974; and No. 40, 1975.