

## PUBLIC SERVICE ACT, 1936.

### No. 2281 of 1936.

An Act to consolidate certain Acts relating to the Public Service.

[Assented to 3rd September, 1936.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

#### PART I.

PART I.

#### PRELIMINARY.

1. This Act may be cited as the "Public Service Act, 1936." Short title.

2. This Act shall come into force on a date to be fixed by proclamation. Commencement.

3. The provisions of this Act are arranged as follows:— Arrangement of Act.

PART I.—Preliminary.

PART II.—Administration.

PART III.—Departments, divisions, offices, and salaries in the public service.

PART IV.—Admission to the public service, alterations of staff, dismissals, &c.

PART V.—Rights, privileges, powers, and duties of officers of the public service.

PART VI.—Miscellaneous provisions.

4. In this Act, unless some other meaning is clearly intended— Interpretation.

"Association" means the Public Service Association of South Australia:

s. 2. This Act was proclaimed to come into force on 1st June, 1937: *Gazette* 25th March, 1937, p. 644.

“board” means the Classification and Efficiency Board continued by this Act:

“class” means class of the public service:

“Commissioner” means the Public Service Commissioner for the time being in office under this Act:

“department” means any department of the public service continued in existence by this Act or declared by the Governor under this Act:

“division” means division of the public service:

“General Secretary” means the General Secretary of the Association or any other person appointed by the Council of the Association to act on his behalf:

“grade” includes office or position:

“member of the board” includes the chairman:

“Minister” means the Minister of the Crown for the time being administering the department in which the officer or person, in connection with whom the term is used, is employed or is proposed or seeks to be employed, or which comprises the office in connection with which the term is used:

“office” includes any position in the public service:

“officer” means person employed in any capacity in the public service:

“permanent head” means the permanent head of the department wherein any officer or person, in connection with whom the term is used, is employed or is proposed or seeks to be employed, or which comprises the office in connection with which the term is used:

“public service” means the public service of the State as defined by section 6.

Repeal and  
saving pro-  
visions.

5. (1) The Acts mentioned in the first schedule are hereby repealed.

(2) Such repeal shall not affect any privileges or rights conferred by section 4 of the Civil Service Amendment Act, 1881; and in respect of any such officer as referred to in the

said section, and his legal personal representative, the said section shall apply notwithstanding such repeal.

(3) All officers and persons appointed permanently or temporarily under any Act hereby repealed, or continued in office by any such Act, and holding office at the commencement of this Act, shall remain in office as if this Act had been in force at the time when they were appointed, and they had been appointed hereunder, and this Act shall apply to them accordingly.

(4) All regulations made by the Governor under any Act hereby repealed, or continued in force under any such Act, which are in force at the commencement of this Act shall continue in force until repealed by regulations made under this Act. Any references in any regulations to any enactment hereby repealed shall be construed as references to the corresponding provisions of this Act.

6. (1) The public service, within the meaning of this Act, comprises all persons employed in any capacity in the public service of the State, with the following exceptions (save where otherwise expressly provided), namely:—

Public service  
defined.  
1259, 1916,  
s. 6,  
1453, 1920,  
s. 3.

(a) The Judges of the Supreme Court:

(b) The Judge in Insolvency:

(c) The President of the Industrial Court:

(d) The Agent-General:

(e) The Auditor-General:

(f) Any officer of either House of Parliament, or any person under the separate control of the President or the Speaker, or under their joint control:

(g) The South Australian Railways Commissioner, and any person in the service of the South Australian Railways:

(h) The Harbors Commissioners appointed under the Harbors Act, 1913:

No. 1149 of  
1913.

(i) Any teacher appointed under the Education Act, 1875, the Education Act, 1915, or any Act amended or substituted for any of those Acts:

No. 11 of  
1875.

(j) Any member of the police force:

(k) Any honorary officer:

## PART I.

- (l) Any officer remunerated by fees, allowances, or commissions only:
- (m) Any person employed at daily or weekly wages, or at piecework rates of payment:
- (n) Any person whose salary or remuneration is fixed by Act of Parliament:
- (o) Any officer or class of officers or any department to whom or to which it is provided by any Act that this Act, or the Acts hereby repealed, shall not apply:
- (p) Any officer or class of officers or department to whom or to which the Governor declares by proclamation that this Act shall not apply.
- (2) Except so far as inconsistent with any Act for the time being in force, the Governor may declare by proclamation that this Act, or any specified provisions of this Act, shall, from the time specified in that behalf in such proclamation—

- i. apply to any of the persons or officers, classes, or departments, mentioned or referred to in this section; or
- ii. cease to apply to any persons or officers, classes, or departments to which by reason of a proclamation made under this section, the same applies or apply;

and every such proclamation shall, except as aforesaid, have effect according to the tenor thereof; and all persons to whom this Act, or any provision of this Act, applies by reason of a proclamation under this section shall, so far as may be necessary to give effect to such proclamation, be in the public service within the meaning of this Act.

## PART II.

## PART II.

## ADMINISTRATION.

*The Classification and Efficiency Board.*

Establishment  
of Classification  
and  
Efficiency  
Board.

1259, 1916,  
s. 7.  
1716, 1925,  
s. 5.

Membership of  
board.

1259, 1916,  
s. 8.  
1716, 1925,  
s. 5.

7. Subject to this Act the Public Service Classification and Efficiency Board constituted under the Acts repealed by this Act shall continue to exist.

8. The board shall consist of—

- (i.) the Commissioner for the time being, who shall be chairman of the board; and

(ii.) two other members appointed by the Governor, who shall be selected from the officers of the public service, and one of whom shall be appointed after nomination by the Council of the Association.

9. (1) The members of the board other than the chairman shall hold office for four years.

Term of office  
of members.  
1259, 1916,  
s. 9.  
1716, 1925,  
s. 5.

(2) Any member of the board shall upon the expiration of his term of office be eligible for reappointment.

(3) The office of any member of the board shall become vacant if such member ceases to be an officer in the public service, or resigns from the board; and in any such case the Governor may fill the vacancy by appointing thereto some person qualified to fill that vacancy under the next preceding section.

10. The members of the board, other than the chairman, shall receive such remuneration for their services as such members as the Governor determines, which remuneration may, if the Governor so directs, be in addition to their salaries as officers in the public service.

Remuneration  
of members.  
1259, 1916,  
s. 10.  
1716, 1925,  
s. 5.

11. Any two members of the board shall form a quorum thereof: Provided that if at any meeting only two members are present, and these members differ in opinion upon any matter, the determination of the matter shall be postponed until all the members are present.

Quorum of  
board.  
1259, 1916,  
s. 11.  
1716, 1925,  
s. 5.

12. (1) The Governor may appoint a secretary to the board, and such (if any) other officers as may be necessary to assist the board.

Officers of  
board.  
1259, 1916,  
s. 11a.  
1716, 1925,  
s. 5.

(2) The secretary and other officers shall be under the direction and control of the board, and shall discharge and exercise such duties and functions as the board requires.

13. (1) In addition to the duties elsewhere in this Act imposed on it, the board shall have the following duties:—

Other func-  
tions of board.  
1259, 1916,  
s. 11f.  
1716, 1925,  
s. 5.

(a) To devise means for effecting economies and promoting efficiency in the management and working of departments by—

- (i.) improved organisation and procedure;
- (ii.) closer supervision;
- (iii.) the simplification of the work of each department, and the abolition of unnecessary work;
- (iv.) the co-ordination of the work of the departments;

- (v.) the limitation of the staff of each department to actual requirements, and the utilisation of such staff to the best advantage;
- (vi.) the improvement of the training of officers;
- (vii.) the avoidance of unnecessary expenditure;
- (b) To consider appeals pursuant to sections 29, 52, and 69 of this Act; and
- (c) To perform such other functions in relation to the public service as are prescribed.

(2) If the board is of opinion that any means ought to be adopted for effecting any of the objects mentioned in paragraph (a) of the last preceding subsection, it shall advise the permanent head of the department of its suggestions or proposals.

(3) If the permanent head does not concur in or adopt the suggestions or proposals he shall, within a reasonable time, inform the board of the reason therefor.

(4) Thereupon the board may, if it thinks fit, report the matter to the Minister administering the department, and if the board's suggestions or proposals are not approved or adopted by the Minister within a reasonable time, the Commissioner shall report the matter to both Houses of Parliament, either in a special report or in his annual report.

**14.** (1) The board may, by writing under the hand of each member of the board, delegate to any member of the board or to any officer, any of the powers of the board under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified, or the place or locality defined, in the instrument of delegation.

(2) Every such delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the board.

(3) If in pursuance of any delegation given to him any delegate of the board makes any recommendation, the permanent head of the department affected or the general secretary may request that the recommendation be referred to the full board, and in that event the recommendation of the delegate shall not be deemed to be a recommendation of the board unless it is indorsed by the full board.

(4) Where any appeal is lodged against any report, action, recommendation, or decision of any person appointed as the delegate of the board under this section, that person shall not hear or take part in the hearing of the appeal.

*The Public Service Commissioner.*

**15.** (1) The Governor may, from time to time, appoint a Public Service Commissioner.

The Public Service Commissioner, his appointment and functions.  
1259, 1916, s. 12.  
1716, 1925, s. 6.

(2) The Commissioner shall have the powers and authorities, and shall discharge and exercise the duties and functions, by this Act vested in or imposed or conferred upon him.

**16.** In case of the illness or other incapacity, absence, or suspension of the Commissioner, or any vacancy in the office of Commissioner, the Governor may appoint a Deputy Public Service Commissioner, who during such illness, incapacity, absence, suspension, or vacancy shall have all the powers and authorities, and discharge and exercise all the duties and functions, of the Commissioner, including his powers, authorities, duties, and functions as a member of the board and as chairman thereof.

Deputy Public Service Commissioner.  
1259, 1916, s. 13.

**17.** (1) The salary of the Commissioner shall be at the following rates:—

Salary of Commissioner.  
1259, 1916, s. 14.

(a) for the first seven years that he holds office, eight hundred pounds a year:

(b) for any subsequent term of seven years, such sum as is fixed by the Governor at or before the commencement of such term.

(2) A Deputy Commissioner shall receive such remuneration as is fixed by the Governor.

(3) The salaries of the Commissioner and any Deputy Commissioner shall be a charge upon and be payable out of the general revenue of the State, which is hereby to the necessary extent appropriated accordingly.

**18.** (1) The Commissioner shall be appointed for a term of seven years, and may, from time to time, be reappointed for further terms of seven years each; and save as provided by this section, the Commissioner shall not be removable from office during any term of appointment unless an address praying for his removal is presented to the Governor from both Houses of Parliament during one session of Parliament, or from one House during one session and from the other House during the next succeeding session, which sessions however need not be both during the same Parliament.

Tenure of office by Commissioner.  
1259, 1916, s. 15.

(2) The Commissioner may be removed from office in the following manner:—

(a) The Governor may, at any time, suspend the Commissioner from office on the ground of incompetence or misbehaviour:

- (b) Whenever the Commissioner is so suspended a full statement of the cause thereof shall be laid before both Houses of Parliament within seven days after the suspension if Parliament is in session, or, if not, within seven days after the commencement of the next session:
- (c) Unless within one month after the day when, and during the same session as, such statement is laid before Parliament, an address from either House of Parliament praying for the removal from office of the Commissioner is presented to the Governor, he shall be restored to office; but if such address is so presented the Governor may remove him from office.
- (3) The Commissioner shall be deemed to have vacated his office if he—
- (a) absents himself from duty for a period of fourteen days, except on leave granted by the Governor;
- (b) resigns his office;
- (c) is adjudicated bankrupt, or makes a composition for the benefit of his creditors for less than twenty shillings in the pound;
- (d) except with the consent of the Governor, engages in any paid employment other than in connection with his duties as Commissioner; or
- (e) becomes a member of either House of the Parliament of the State or the Commonwealth.

Secretary and other officers of the Commissioner.  
1259, 1916, s. 16.

19. (1) The Governor may appoint a secretary to the Commissioner, and such (if any) other officers as may be necessary to assist the Commissioner in the administration of this Act.

(2) The secretary and all such other officers shall be under the direction and control of the Commissioner, and shall discharge and exercise such duties and functions as are imposed or conferred upon them respectively by the Commissioner.

Record of officers to be kept and gazetted.  
1259, 1916, s. 22.  
1716, 1925, s. 10.

20. (1) The Commissioner shall keep a record of all officers showing with regard to each officer—

- (a) his age and length of service;
- (b) the office he holds;
- (c) his division, and section; and
- (d) his salary.

(2) The Commissioner shall in the month of August in each year forward to the Governor a list of all officers employed on the next preceding thirtieth day of June together with the particulars recorded as required by subsection (1) hereof with respect to them, and showing the dates of appointment of such officers.

(3) A copy of the list so published shall be laid before Parliament within fourteen days of publication, or if Parliament is not sitting, then within fourteen days after the commencement of the next session of Parliament.

**21.** The Commissioner shall submit for the consideration of the Governor reports as to any matters which by this Act are required to be, or may be, dealt with by the Governor.

Commissioner to make reports for assistance of the Governor.  
1259, 1916,  
s. 23.

**22.** The Commissioner shall furnish to the Governor for presentation to the Parliament at least once in each year a report on the condition and efficiency of the public service; and in such report there shall be set forth any changes and measures which the Commissioner or the board considers necessary for improving the working of the public service, and especially for insuring efficiency and economy therein or in any department thereof. The Commissioner shall also in such report draw attention to any breaches or evasions of this Act which may have come under his notice.

Commissioner to report on state of public service to Governor.  
1259, 1916,  
s. 24.

**23.** (1) The board or the Commissioner, or any person to whom any power or function of the board or the Commissioner is delegated under this Act, may at any time, in the performance of their duties, enter any department, or by writing signed by them or him, summon any person whose evidence appears to be material for the purpose of any application, inquiry, or investigation before them or him under this Act, to appear at the time and place specified in the summons and produce any official or public or other books, documents, or writings in his custody or under his control which may be material to such application, inquiry, or investigation.

Power of board and Commissioner to enter departments and summon witnesses.  
1259, 1916,  
s. 65.  
1716, 1925,  
s. 22.

(2) The board or any member thereof, or any person to whom any power or function of the board or Commissioner is delegated as aforesaid, may examine any witness upon oath or otherwise touching the matter of any such application, inquiry, or investigation.

(3) If, without reasonable cause, any person summoned as aforesaid, after being paid or tendered the prescribed allowance for expenses—

(a) fails to appear as required by the summons, or

## PART II.

(b) refuses to be sworn or to answer any question put to him by the board or any member thereof, or the Commissioner or any person to whom any power or function of the board or the Commissioner is delegated as aforesaid, or

(c) fails to produce any book, document, or writing pursuant to such summons,

he shall be liable to pay a penalty not exceeding twenty pounds, which shall be recoverable before any special magistrate or two justices of the peace: Provided that no person shall be compelled to answer any question the answer to which would tend to incriminate him.

Procedure of board.  
1716, 1925,  
s. 28.

## 24. The board—

(a) before determining any thing or matter over which it has jurisdiction, other than those specified in paragraph (a) of subsection (1) of section 13, shall notify the Association of the nature and purpose of the proceedings, and, if requested by the Association, fix a time and place for the hearing of any evidence, argument, or other relevant representations which the Association may submit;

(b) in the exercise of any such jurisdiction, shall not be bound by any rules or practice as to evidence, but may inform its mind on any matter in such manner as it thinks fit; and

(c) may conduct any or all of its proceedings in public or in private as it thinks fit.

## PART III.

## PART III.

## DEPARTMENTS, DIVISIONS, OFFICES, AND SALARIES IN THE PUBLIC SERVICE.

Departments of the service and permanent heads.  
1259, 1916,  
s. 17.

25. (1) The departments of the public service shall, until other departments are declared under this Act, be those declared prior to and in existence at the commencement of this Act, and the head of each department shall, until other provision is made, be the holder for the time being of the office proclaimed in that behalf by proclamation made under section 17 of the Public Service Act, 1916.

(2) The Governor may from time to time, upon the recommendation of the Minister made upon a report from the

s. 25. For proclamations specifying the departments of the public service, see table at the end of this Act.

Commissioner, by proclamation declare any additional departments in the public service or discontinue any department previously declared. Any additional department so declared may be formed by the severance thereof from an existing department or departments, or by the amalgamation of existing departments or parts thereof, or otherwise howsoever, as the Governor deems proper.

26. The public service shall consist of four divisions, that is to say—

- (1) The First Division.
- (2) The Second Division.
- (3) The Third Division.
- (4) The Fourth Division.

Divisions of the service.  
1259, 1916,  
s. 25.  
1716, 1925,  
s. 12.

27. (1) The first division shall include such officers as the Governor determines.

(2) The second division shall include officers who are required to exercise executive or professional functions in the more important offices of the public service, and whose offices the board directs to be included in that Division.

(3) The third division shall include all officers whom the board directs to be included in that division.

(4) The fourth division shall include all officers not included in the first, second, or third divisions.

Officers included in each division.  
1259, 1916,  
s. 26.  
1716, 1925,  
s. 12.

28. (1) Every officer of the first division shall be paid such salary as is determined by the Governor on the recommendation of the board: Provided that the board shall notify every such officer of its recommendation as to his salary by notice published in the *Gazette*, and the Governor shall not determine the salary of any such officer until after the expiration of fourteen days from the time such officer receives notice of the board's recommendation.

Salaries.  
1259, 1916,  
s. 27.  
1716, 1925,  
s. 12.

Any such officer may request the board to reconsider its recommendation as to his salary, and the board shall reconsider its recommendation accordingly.

(2) Every other officer shall be paid a salary not lower than the minimum which is fixed by the board in respect of the office held by such officer.

29. (1) Every officer other than an officer of the first division shall, subject as hereafter mentioned in this section, be entitled to receive an annual increase of salary of the amount fixed by the board until such officer is receiving the maximum salary fixed by the board in respect of the office

Annual increase of salaries.  
1259, 1916,  
s. 28.  
1716, 1925,  
s. 12.

held by such officer; but no such officer shall be entitled to any increase of his salary for the time being unless he has been in receipt of such salary for a period of twelve months.

(2) No officer shall be entitled to receive an increase of salary unless, in the opinion of the Commissioner, his conduct, diligence, and efficiency during the year previous to the granting of the increase have been satisfactory.

(3) If, in the opinion of the Commissioner, an officer is not entitled to receive an increase of salary, he may issue an order in writing depriving the officer of the increase for such time as the Commissioner considers justified, and in that event the increase shall, subject to the succeeding provisions of this section, not be paid.

(4) Any officer affected by any such order may appeal to the board against the order.

(5) The permanent head shall forward the appeal with a report to the board, and the board shall, after full inquiry, determine the appeal, and its decision shall be final.

**30.** (1) The return prepared by the board and published in the *Gazette* on the eighteenth day of October, 1926—

- (a) setting out the number of officers required for the efficient discharge of the duties of each department;
- (b) classifying each permanent office in the public service (other than an office of the first division) by assigning such office to the division to which in the board's opinion it properly belongs, and fixing the maximum and minimum salary of such office, the amount of the annual increase of such salary, and the salary payable to the holder of such office at the time of the classification;
- (c) stating the duties to be assigned to each office; and
- (d) grouping all the classified offices according to the nature of the duties into three sections, as follows:—
  - (i.) the professional section:
  - (ii.) the clerical section:
  - (iii.) the general section:

shall continue in force subject to any variations thereof or additions thereto made by the board under this Act or the Acts hereby repealed, and subject to any decision of the board given on an appeal under this Act or the Acts hereby repealed.

Continuance  
in force of  
classification  
made under  
repealed Acts.  
Cf. 1259,  
1916, ss. 11  
(b), 11cc.  
1716, 1925,  
s. 5.  
2136, 1933.  
s. 4.

(2) The board shall from time to time make such variations of, and additions to, the said return as any alteration in the conditions and requirements of the public service renders necessary.

(3) Any variation of or addition to the return shall be published forthwith in the *Gazette*, and shall come into operation upon the expiration of fourteen days from the date of such publication.

(4) Before completing any return or variation of or addition to a return or determining any appeal under this Part the board shall send a copy of its proposed return or variation of or addition to a return or a written statement of its proposed decision on the appeal to the Chief Secretary, who may within twenty-one days after receiving the copy or statement submit to the board any evidence, information, or opinion relevant to the proposed return or decision. The board shall, before completing the return or variation of or addition to a return, or finally determining the appeal, report in writing to the Chief Secretary on any matter so submitted to it.

31. (1) Any officer dissatisfied with the classification of his office or the salary thereof, as set forth in any variation of or addition to the return mentioned in the next preceding section, may within thirty days after publication in the *Gazette* of the variation or addition appeal against that classification by sending to the board a notice of appeal in writing setting forth the grounds of his dissatisfaction.

Appeals against the board's classification. 1259, 1916. s. 11c. 1716, 1925. s. 5.

(2) An appeal under this section shall be considered by the board in conference with the permanent head of the department in which the appellant works, and with the appellant, or if the appellant so desires, with the general secretary of the Association.

(3) Where the appellant does not attend the conference, or is not represented, the appeal shall be considered by the board in conference with the permanent head or his representative.

(4) After conferring as aforesaid, the board shall determine the appeal, and its decision shall be final: Provided that if upon appeal the board varies the decision appealed against, the variation shall take effect as from the date upon which the first decision would have come into operation.

32. The board may, when classifying any office the holder of which is required to have professional or technical knowledge or skill, appoint a properly qualified person to be an assessor to assist it in classifying such office.

Assessors. 1259, 1916. s. 11d. 1716, 1925. s. 5.

## PART III.

Saving of industrial awards and orders.  
1716, 1925, s. 27.

**33.** Any decision of the board under this Part or the Acts repealed by this Act relating to the salaries payable to any officers or class of officers shall be subject to any award or order of the Industrial Court and to any industrial agreement filed in the said court.

Saving of power of Industrial Court.  
1716, 1925, s. 27.

**34.** Nothing in this Part shall be so construed as to abridge any power of the Industrial Court under the Industrial Code, 1920, and the Acts amending the same.

## PART IV.

## PART IV.

ADMISSION TO THE PUBLIC SERVICE, ALTERATIONS OF STAFF, AND DISMISSALS.

*Admission to the service.*

Eligibility for employment in public service.  
1259, 1916, s. 31.  
Cf. U.K. 9 & 10 Geo. 5 c. 92, s. 6.

**35.** (1) Except as hereinafter provided, no person shall be admitted to the public service unless he is a natural born or naturalised subject of His Majesty and has successfully passed the entrance examination prescribed.

(2) A naturalised subject, who before his naturalisation was a subject of any foreign state, prescribed by regulation, shall not be admitted to the public service within five years of the date of his naturalisation.

Entrance examinations and examiners  
1259, 1916, s. 52.

**36.** (1) The Governor may make regulations providing for the examination of persons desirous of admission into the public service. Such regulations, in addition to any other matter thereby prescribed, shall prescribe—

(a) a preliminary medical examination or test as to the health of candidates;

(b) the nature and standards of the examinations to which candidates are required to submit themselves; and

(c) the manner of holding such examinations.

(2) Such examinations (other than medical) shall be competitive.

(3) The Governor, on the recommendation of the Commissioner, may from time to time appoint such examiners as may be necessary for the conduct of the prescribed examinations.

**37.** (1) The Commissioner shall hold or cause to be held such examinations as are necessary in order to test the efficiency and aptitude of candidates for employment in any branch of the public service.

Arrangement of times and places of examination.  
1259, 1916,  
s. 33.  
1716, 1925,  
s. 13.

(2) The Commissioner shall, as far as practicable, arrange the times and places of entrance examinations so that candidates shall have reasonable facilities in the localities in which they reside for competing at such examinations.

**38.** Whenever additions to the public service are required, the Commissioner shall give notice thereof in the manner prescribed, stating—

Public notice of examinations.  
1259, 1916,  
s. 34.

- (a) the number of new appointments which it is estimated will have to be made; and
- (b) the division and class or grade thereof respectively; and
- (c) the times and places of examinations.

**39.** (1) Except as hereinafter provided, every person admitted to the public service shall, in the first instance, be appointed on probation only, and may be continued on probation for a period of six months, but the services of any person appointed on probation may, at any time during his probation, be dispensed with by the Minister (or by the Governor, if such person was so appointed by the Governor) on the recommendation of the Commissioner made upon a report from the permanent head.

Admissions to public service to be on probation only.  
1259, 1916,  
s. 35.  
1385, 1919,  
s. 4.

(2) After the period of six months on probation has expired, the Governor may, after reports on the matter by the Commissioner and the permanent head, confirm or annul the appointment.

(3) No probationer whose appointment has been annulled as aforesaid shall be eligible as a probationer at any time within twelve months from the date of the annulling of his appointment.

**40.** (1) If at any time in a special case it appears expedient or desirable, in the interests of the public service, to appoint to any division a person who is not in the public service, or is only temporarily employed in the public service, the Governor may, after considering the recommendation of the

Appointments in special cases without examination or probation.  
1259, 1916,  
s. 36.

## PART IV.

Commissioner on the matter, appoint such person as the Governor thinks suitable without examination, and, if the Governor thinks proper, without probation.

(2) No such appointment shall be made until the Commissioner has certified that in his opinion there is no person available in the public service or, if the person proposed to be appointed is temporarily employed in the public service, no person available and permanently employed in the public service, who is as capable of filling the position to which it is proposed that the appointment shall be made as the person proposed to be appointed.

**41.** No person under fourteen years of age shall be appointed to the public service.

**42.** Notwithstanding any other provision of this Act, any person who is permanently in the employ of the Government of the State but is not in the public service shall, subject to regulations made in that behalf, be eligible for appointment, upon the recommendation of the Commissioner, to any division and office in the public service; and such appointment may, if the Commissioner so recommends, be made without examination, and also if he so recommends, without probation.

**43.** (1) Any person having at any time, either before or after the commencement of this Act, retired from any salaried office in the public service not being of a temporary or casual character shall, if not more than sixty years of age, be eligible for appointment to the public service without examination or probation.

(2) In the case of any person who has received a sum of money as allowance on such retirement, no appointment shall be made until he has, if so required by the Governor, paid into the Treasury an amount equal to such allowance, or has arranged so to pay the same by instalments to the satisfaction of the Commissioner. Any sum so paid shall be refunded upon the subsequent retirement from the public service of the person so appointed.

*Commonwealth and State Officers.*

**44.** The fact that any person is an officer of the public service of the Commonwealth shall not disqualify him from also executing the duties of an office in the public service of the State.

**45.** (1) The Governor may arrange with the Governor-General of the Commonwealth for the performance by an officer in the public service of the Commonwealth, for the

Age of new appointees.  
1259, 1916,  
s. 37.  
1716, 1925,  
s. 14.

Appointment of persons in Government employ to offices in the public service.  
1259, 1916,  
s. 38.  
1716, 1925,  
s. 15.

Reappointment of retired officers.  
1259, 1916,  
s. 39.

Service in Commonwealth not to disqualify for State service.  
1259, 1916,  
s. 41.

Discharge of State functions by officer of Commonwealth.  
1259, 1916,  
s. 42.

Government of the State, of any work or services, or for executing the duties of any office in the public service of the State.

(2) In any such case the Governor may, by agreement with the Governor-General or otherwise make arrangements for determining—

- (a) the rate of payment to be made by the Government of the State to the Government of the Commonwealth for the services performed or the work done for the State by such officer; and
- (b) any matters which may require to be adjusted with regard to the performance of such duties or the execution of such work by such officer.

**46.** Where an officer of the State performs duties for the Government of the Commonwealth, the Governor, may by agreement with the Governor-General of the Commonwealth or otherwise, make arrangements for determining—

Arrangement for performance of Commonwealth duties by State officer.  
1259, 1916, s. 43.

- I. the rate of payment to be made by the Government of the Commonwealth to the Government of the State for the services performed for the Commonwealth by such officer; and
- II. any matters which may require to be adjusted with regard to the performance of such duties by such officer.

**47.** The Governor may, at the request of the Governor-General of the Commonwealth, authorise and cause any work or services to be performed for the Government of the Commonwealth; and the Governor, by agreement with the Governor-General or otherwise, may make arrangements for determining—

Arrangement for performance of work or services for Government of Commonwealth.  
1259, 1916, s. 44.

- (a) the rate of payment to be made by the Government of the Commonwealth for the performance of such work or services; and
- (b) any matters which may require to be adjusted with regard to the performance of such work or services.

**48.** (1) Every person who whether before or after the commencement of this Act has been or is appointed or transferred to the public service of the Commonwealth, and who at the time of appointment or transfer was or is employed permanently in the public service of the State, shall, subject

Re-appointment from Commonwealth public service.  
1259, 1916, s. 45.

to anything prescribed, be eligible for appointment to an office in the public service of the State; and the Governor, on the recommendation of the Commissioner, may exempt such person from examination or probation or both.

(2) The expression "public service of the State," where firstly used in this section, has not the limited meaning assigned to it by sections 4 and 6.

*Temporary Employment.*

Temporary  
employment.  
1259, 1916,  
s. 46.  
1516, 1922,  
s. 2

49. (1) Whenever, in the opinion of the Minister, the prompt dispatch of the business of any department renders temporary assistance necessary, and the Commissioner is unable to arrange for such assistance from other departments, the Commissioner may select such persons as appear to him to be best qualified for such work.

(2) The Minister may employ the persons so selected to supply such temporary assistance; and they shall be paid at the rates determined from time to time by the Commissioner as applicable to the work performed.

(3) The services of any person temporarily employed may be dispensed with at any time by the Minister or by the permanent head.

(4) A person may be employed under this section for any period.

(5) Every person temporarily employed under this section shall be entitled to all the benefits and privileges of an officer under section 74.

(6) A person temporarily employed under this section shall not by virtue of such temporary employment be or become entitled to any of the benefits or privileges of an officer under section 75.

Returned  
soldiers tem-  
porarily em-  
ployed may be  
appointed to  
permanent  
offices in  
public service.  
1385, 1919,  
s. 11.

50. (1) Notwithstanding anything contained in this Act, the Governor may appoint to any office in the public service any person who has been on active service and who has been temporarily employed for a period of not less than six months in any department of the public service subject to the following conditions:—

- (a) That the permanent head of the department certifies that such person is of good character and satisfactorily performs his duties; and
- (b) That the Commissioner is satisfied that such person is competent to perform the duties of such office.

(2) The provisions of this Act as to age at the time of appointment, and as to examinations for appointment, shall not apply to persons appointed under this section, nor shall the provisions as to probation apply except in cases where the Governor directs that such provisions shall apply.

(3) In this section "active service" means service outside Australia in the war with Germany which commenced on the fourth day of August, nineteen hundred and fourteen, and with any of the Allies of Germany in that war, as a member of—

- (a) the Australian Imperial Force or the Royal Australian Navy; or
- (b) His Majesty's Army or Navy; or
- (c) any naval or military force raised in any country forming part of His Majesty's Dominions for service in such war outside the country wherein such force is raised.

*Alterations of Staff.*

51. The Governor may, on the recommendation of the board—

Power to create or abolish offices.  
1259, 1916,  
s. 47.  
1716, 1925,  
s. 16.

- (a) create a new office in any department:
- (b) abolish any office in any department.

52. (1) Whenever a vacancy occurs in any office, if it is expedient to fill such vacancy, the Commissioner may recommend an officer in the public service for appointment to such vacancy, regard being had to the relative efficiency or, in the event of equality of efficiency of two or more officers, to the relative seniority of the officers available for appointment.

How vacancies to be filled by appointment of officers in the service.  
1259, 1916,  
s. 48.  
1716, 1925,  
s. 18.

(2) "Efficiency" in this section means special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit and good and diligent conduct.

(3) Any recommendation made in pursuance of subsection (1) of this section shall be notified in the prescribed manner, and shall be subject to the right of appeal to the board.

(4) An appeal under this section shall be made in such manner and within such time as are prescribed, and may be made by any officer who at the time immediately prior to the making of the recommendation was senior in salary or length of service to the officer recommended and who considers that he is more entitled to promotion to the vacant

office than the officer recommended on the ground of superior qualifications under subsection (1) hereof.

(5) An appeal under this section shall be considered, as prescribed, by the board in conference with the permanent head or a representative of the permanent head of the department in which the vacancy occurred, and with the appellant or, if he so desires, with the General Secretary of the Association, and after the conference the board shall determine the appeal.

(6) Where an appeal is upheld by the board it shall so inform the Commissioner, who shall thereupon recommend the appellant officer for appointment to the vacant position and cancel the provisional appointment.

(7) Where an appeal is disallowed in pursuance of this section, or no appeal is lodged within the prescribed time, the original recommendation shall be confirmed.

(8) The recommendation of the Commissioner shall be forwarded to the Governor, who may, upon receipt thereof, appoint an officer of the public service to fill the vacancy.

(9) The provisions of this section shall apply in every case where a new office is created by the Governor, and it is proposed to fill such office by the appointment thereto of some person in the public service, in the same way as they apply to the filling of a vacancy in an existing office.

(10) Nothing in this section shall be construed as derogating from the power conferred by section 40.

Right of officers to decline promotion.

1259, 1916, s. 50.

**53.** Any officer may decline an offer of promotion or appointment without prejudice to his right to future promotion or appointment.

Officer may not refuse to remove to another office.

1259, 1916, s. 51.

**54.** No officer shall refuse compliance with an order of the Governor, directing his removal from one office to another, at his existing salary, in any part of the State. Disregard of or disobedience to any such order shall be deemed to be a breach of this section.

Re-arrangement of officers and work.

1259, 1916, s. 52.  
1716, 1925, s. 20.

**55.** When it appears to the Minister or the permanent head of any department necessary or expedient for the more economic, efficient, or convenient working of such department, or any branch thereof, that any particular disposition of officers and re-arrangement of work should be effected, the matter shall be referred to the board for consideration

and report: Provided that nothing in this Act shall be construed as restricting the ordinary and necessary departmental authority of such Minister or permanent head with respect to the direction and control of officers and work.

56. If at any time the board finds that a greater number of officers is employed in any department or branch of a department than is necessary for the efficient working of that department or branch, any officer whom the board finds is in excess may be transferred by the Commissioner to such other position of equal classification and salary in the public service as the officer is competent to fill, and if no such position is available the officer may be so transferred to a position of lower classification and salary. If no position is available for the officer, the Governor may, upon the recommendation of the Commissioner, call upon such officer to retire from the public service; and if he does not retire he may be dismissed from the public service.

Transfer or retirement when excessive number of officers employed.  
1259, 1916, s. 21.  
1716, 1925, s. 9.

#### *The Retiring Age.*

57. (1) Every officer shall retire on attaining the age of sixty-five years in the case of a male officer and sixty years in the case of a female officer: Provided that—

Retirement of officers.  
1259, 1916, s. 70.  
2136, 1933, s. 6.

- I. the Governor may, from time to time, direct that any officer competent and willing to do so shall remain in the public service after attaining the age of sixty-five years of age in the case of a male officer or sixty years in the case of a female officer for any period fixed by the Governor and not extending beyond the seventieth birthday of any such male officer or the sixty-fifth birthday of any such female officer:

Provided that no direction shall be given under the foregoing power as a result of which the service of any officer is extended beyond the thirty-first day of December, nineteen hundred and thirty-eight, and no such direction shall be given after the thirty-first day of December, nineteen hundred and thirty-eight, except upon the recommendation of the board:

- II. if before the retirement of any officer there is power to grant him leave of absence under section 75 (except sick leave), or the whole or any portion of the period of such leave already granted to him has not expired, he shall, for the purposes only of that section, be deemed to be still in the public

service; but his successor may, nevertheless, be appointed.

(2) Notwithstanding the provisions of any Act as to the tenure of office of any officers appointed thereunder this section shall apply to all persons in the employ of the Government of the State, except the Judges of the Supreme Court, the Judge in Insolvency, the President of the Industrial Court, and the Clerks of the Legislative Council and the House of Assembly.

*Dismissal and Disrating of Officers.*

**58.** If any officer employed, otherwise than temporarily, in the public service is guilty of a breach of any provision of this Act, or—

- I. disobeys, disregards, or makes wilful default in carrying out any lawful order made or given by any person having authority to give such order, or by word or conduct displays insubordination; or
- II. is negligent, careless, or indolent in the discharge of his duties; or
- III. is inefficient or incompetent for the discharge of his duties, his inefficiency or incompetency arising from causes within his own control; or
- IV. uses intoxicating beverages or drugs to excess; or
- V. conducts himself in a disgraceful, improper, or unbecoming manner either in the discharge of his duties or in public; or
- VI. otherwise than in the discharge of his duties, directly or indirectly discloses information acquired in the course of his duties except by the direction or with the permission of the Minister; or
- VII. without the permission of the Minister, makes any communication or contribution, directly or indirectly, and whether anonymously or otherwise, to any newspaper or any publication of a like nature on any matter affecting the public service or any department, or the business or the officers of the public service or of any department, or on his own office or his own acts or duties as an officer,

Offences by officers.  
1259, 1916,  
s. 53.

Cf. U.K.  
1 & 2 Geo. 5  
c. 28;  
10 & 11  
Geo. 5 c. 75.

s. 58. HUNKIN v. SIEBERT (1934) S.A.S.R. 347; affirmed (on other grounds) by HUNKIN v. SIEBERT (1934) 57 C.L.R. 538; 8 A.L.J. 273. S. 58 does not apply where a felony is committed by an officer of the public service.

ss. 58, 59. HUNKIN v. SIEBERT (1934) 51 C.L.R. 538; 8 A.L.J. 273; affirming HUNKIN v. SIEBERT (1934) S.A.S.R. 347. Ss. 58 and 59 define exhaustively the occasions and mode of exercise of the Crown's power to suspend public servants. A public servant is entitled to salary during suspension.

he shall be guilty of an offence, and shall be liable to such punishment as may be determined upon under section 59.

59. If any officer (not being a permanent head) is charged with the commission of any such offence as mentioned in section 58, he may be dealt with in the following manner:—

Investigation  
of and punish-  
ment for  
offences.

1259, 1916,  
s. 54.  
1385, 1919,  
ss. 5 and 10.

- (a) He may be temporarily suspended by the permanent head, or, in cases of emergency, by any officer prescribed as having power to suspend officers in the office or place in which the officer charged is employed. If he is suspended otherwise than by the permanent head, the suspension shall be reported forthwith to the permanent head:
- (b) The permanent head, if satisfied that the charge is not of such a serious nature as to require a suspension, may permit the officer to continue in the performance of his duties pending the determination of the charge:
- (c) The permanent head or other suspending officer shall forthwith after suspension furnish the suspended officer with a statement in writing of the charge on which he is suspended, and require him forthwith to state in writing whether he admits or denies the truth of the charge, and to give any explanation in writing which he desires to furnish as to such charge, for consideration:
- (d) After consideration of the charge and the explanation in writing (if any) furnished by the suspended officer, and after such (if any) further investigation as he deems necessary, the permanent head—
  - i. if he is of opinion that the alleged offence has not been committed, shall forthwith remove the suspension:
  - ii. if he is of opinion that the alleged offence has been committed, but is not of a serious nature, may reprimand or caution the suspended officer and remove the suspension: Provided that if the suspended officer is dissatisfied with any action of the permanent head under this subdivision he may, within seven days after such action has been taken, appeal in writing to the Commissioner stating the grounds of his dissatisfaction, and the Commissioner shall thereupon inquire

into and consider the appeal and the grounds thereof and the charge, and shall give such decision as he deems just concerning the charge, and the decision of the Commissioner shall be final:

III. if he is of opinion that the alleged offence has been committed and is of a serious nature, shall forthwith refer the charge to the Commissioner, and the Commissioner shall thereupon, if he is of opinion that the charge is not of so serious a nature that an investigation thereof should be made by a board of inquiry, inquire into and consider the charge and shall give such decision as he deems just concerning it: Provided that if the suspended officer is dissatisfied with any action or decision of the Commissioner under this subdivision, he may, within seven days after such action has been taken or such decision has been given, appeal in writing to the board of inquiry hereinafter provided for, stating the ground of his dissatisfaction, and the said board shall thereupon inquire into and consider the appeal and the grounds thereof and the charge and shall give such decision as it deems just thereon, and the decision of the board shall be final:

(e) If the Commissioner is of opinion that such charge is of so serious a nature that an investigation thereof should be made by a board of inquiry, he shall forthwith refer the charge to a board of inquiry. The board of inquiry shall consist of—

- (1) a judge of the Supreme Court, or a special magistrate, appointed by the Governor for the purpose of the inquiry, who shall be the chairman;
- (2) a member (not being a member of the legal profession), appointed by the Commissioner for the purpose of the inquiry, who shall be an officer of the public service, but not of the department in which the suspended officer is employed; and
- (3) an officer of the division to which the suspended officer belongs, elected by the

officers of such division in such manner as is prescribed by regulation, who shall hold office for such term, and subject to such conditions, as are so prescribed.

If the officer so elected is himself the suspended officer or is otherwise personally interested in the inquiry, or owing to illness or absence from the State or for any other reason is incapable of acting, the board of inquiry shall consist of the members mentioned in subdivisions (1) and (2) hereof, and the officer (if any) of the division to which the suspended officer belongs who at the last election of an officer of that division to serve on the board received the next highest number of votes to the officer elected, or if such officer is also personally interested in such inquiry or incapable of acting for any such reason as aforesaid, or there is no such officer, such other officer belonging to the said division as is appointed by the Governor on the recommendation of the Commissioner.

(f) If any charge is admitted, or is found by the Commissioner or the board of inquiry to be proved, the Minister may—

- I. deprive the suspended officer of his annual or other leave of absence during, or in respect of a specified period; or
- II. further suspend such officer for such period as he thinks fit; or
- III. according to the gravity of the offence, reduce such officer to a lower class or grade, or subdivision of a class or grade, with a corresponding reduction in salary or other remuneration, or transfer him to some other office, or both so reduce and transfer him; or
- IV. dismiss such officer from the public service, or require him to resign within a specified time (in which case he may be dismissed by the Minister unless he so resigns): Provided that, in the case of any office as to which it is so prescribed by regulation, the power to dismiss or call upon any officer to resign shall not be exercised except with the previous approval of the Governor;

and the suspended officer, however dealt with under this paragraph, shall not, unless otherwise ordered by the Governor, be entitled to any salary or wages in respect of the period of his suspension.

- (g) If no charge is admitted, and the Commissioner or the board of inquiry report that no charge has been proved, the Minister upon his being supplied with the report of the Commissioner or the board, the suspension shall remove and the suspended officer shall be reinstated in his office without any loss of salary or wages in respect of the period of his suspension.

Offences by permanent heads.  
1259, 1916, s. 55.

60. When the permanent head of a department is charged with any of the offences mentioned in section 58 the Minister may suspend him and, in such case, the provisions of paragraphs (c) to (g) inclusive of section 59, *mutatis mutandis*, shall apply, the word "Minister" being read instead of the words "permanent head" wherever they occur in those paragraphs, and the word "Governor" being read instead of the word "Minister" wherever it so occurs.

Provisions as to inquiries by the Commissioner or the board of inquiry.  
1259, 1916, s. 56.  
1385, 1919, s. 6.

61. The following provisions shall apply to and in respect of inquiries by the Commissioner or the board of inquiry under section 59 or 60:—

- (a) The Officer against whom a charge is made may, with the approval in writing of the Minister, be represented upon the hearing by counsel or agent, who may examine witnesses and address the Commissioner or the board of inquiry on his behalf
- (b) The Commissioner or the board of inquiry shall inquire as to the truth of the charges without regard to technicalities or legal forms, and shall direct himself or itself by the best evidence he or it can procure, or that is laid before him or it, whether it is such evidence or is tendered in such manner, as the law would require or admit in other cases, or not:
- (c) The inquiry shall, if the Commissioner or the board of inquiry so directs, be held in private.
- (d) If the Commissioner or the board of inquiry finds that a charge is not proved, he or it may recommend that the reasonable expenses, or any part thereof, incurred by the officer in meeting such charge, or if he has been suspended, any loss of

salary incurred by him in consequence of such suspension (the amount recommended being specified in the recommendation), be paid by the Government. Every such recommendation shall be considered by the Governor.

- (e) A copy of any charge and of all documents intended to be used against the officer at the inquiry shall, where practicable, be furnished to the officer at least seven days before the hearing of the inquiry is commenced.

**62.** If any officer is convicted of any felony or, unless the Governor directs to the contrary, of any other indictable offence, he shall be deemed to have forfeited his office, and he shall thereupon cease to perform the duties thereof, and his salary or other remuneration shall cease as from the day of the conviction, or, if the Governor so directs, from the date of the commission of the offence.

Forfeiture of office on conviction of indictable offence.

1259, 1916, s. 57.

**63.** If any officer is adjudicated bankrupt, or makes a composition for the benefit of his creditors for less than twenty shillings in the pound, he shall report the matter at once to the Commissioner, and unless (whether he so reports or not) he satisfies the Commissioner that he has not been guilty of fraud, dishonorable conduct, or extravagance, such officer may, by order of the Governor, be dismissed from the public service, or be reduced to a lower class or grade, or be reprimanded or otherwise punished.

Dismissal on bankruptcy.

1259, 1916, s. 58.

**64.** (1) If an officer appears to the Commissioner, after a report from the permanent head or otherwise, to be unfit to discharge or incapable of discharging the duties of his office efficiently, the Minister may, on the recommendation of the Commissioner, call upon such officer to retire from the public service within the time specified by the Minister, or transfer him to some other office in a department under the Minister; or such officer may be transferred by the Governor to an office in any department: Provided that in the case of any office as to which it is so prescribed by regulation, the power to call upon an officer to retire from the public service shall not be exercised except with the previous approval of the Governor.

Services of incapable officer may be dispensed with.

1259, 1916, s. 59, 1385, 1919, s. 7.

(2) If any officer so called upon to retire does not retire within the time specified as aforesaid he may be dismissed from the public service by the Minister.

## PART IV.

Saving of  
right of Crown  
to dispense  
with service of  
officers.  
1259, 1916,  
s. 60.

**65.** Nothing in this Act shall be construed or held to abrogate or restrict the right or power of the Crown, under any other Act or at common law, to dispense with the services of any person employed in the public service.

Saving of  
power of  
Chief Justice  
to appoint and  
dismiss  
associates.  
1259, 1916,  
s. 61.  
Cf. U.K.  
15 & 16  
Geo. 5 c. 49,  
s. 114.

**66.** (1) Nothing in this Act shall affect the mode of appointing and dismissing the associates to the judges of the Supreme Court which existed at the time of the passing of this Act.

(2) Subject to subsection (1) hereof, all the provisions of this Act shall apply to such associates in the same manner as if they had been appointed by the Governor under section 40 upon the recommendation of the Commissioner.

## PART V.

## PART V.

### RIGHTS, PRIVILEGES, POWERS, AND DUTIES OF OFFICERS OF THE PUBLIC SERVICE.

Performance  
of duties and  
exercise of  
powers of  
officer in his  
absence.  
1259, 1916,  
s. 62.

**67.** Where in or by any Act, order-in-Council, proclamation, rule, regulation, by-law, contract, or agreement any duty, obligation, right, or power is imposed or conferred upon any officer in His Majesty's service, whether in the public service as defined by sections 4 and 6 or not (other than a Minister of the Crown or a judicial officer) in his capacity as such officer, such duty, obligation, right, or power may, during his temporary absence or incapacity, be performed or exercised by any officer directed by the Governor to perform and exercise the duties, obligations, rights, and powers of the first-mentioned officer during such absence or incapacity, in the same manner and to the same extent in all respects as the same might have been respectively performed or exercised by such first-mentioned officer; and everything done under the provisions of this section shall be as good and effectual for all purposes and against all persons whatsoever as if done by such first-mentioned officer.

Responsibility  
of permanent  
heads.  
1259, 1916,  
s. 18.

**68.** The permanent head of a department shall be held responsible for its discipline, general working, and efficiency, and shall advise the Minister controlling such department in matters relating thereto, and shall, in addition to the duties of his office, perform such other duties as such permanent head as the Governor directs.

s. 65. *HUNKIN v. SIEBERT* (1934) 51 C.L.R. 538; 8 A.L.J. 273; affirming *HUNKIN v. SIEBERT* (1934) S.A.S.R. 347. S. 65 does not preserve the prerogative power to suspend. The power to suspend is now restricted to the occasions and modes of exercise prescribed in the Public Service Act, 1936.

69. (1) Any officer having any grievance relating to his employment, or affected by any report or recommendation made by the Commissioner under this Act may, in such manner and within such time as are prescribed, appeal to the Commissioner to consider or reconsider the matter. The Commissioner shall thereupon consider the appeal and advise the appellant of his decision. If the appellant is not satisfied with the decision of the Commissioner, he may, within fourteen days of the receipt of notification of that decision, appeal to the board.

Grievances.  
1259, 1916,  
s. 64.  
1716, 1925,  
s. 21.

(2) An appeal under this section shall be considered as prescribed by the board in conference with the permanent head or a representative of the permanent head of the department to which the appellant belongs, and with the appellant, or, if he so desires, with the general secretary of the Association, and after the conference the board shall transmit the evidence taken, together with the recommendation thereon, to the Commissioner, who shall thereupon confirm the same, and so determine the appeal.

70. (1) If any officer desires to offer himself for election by any constituency as a member of the Parliament of the State or of the Commonwealth, he shall make application to the Governor that the provisions of this section shall apply to him. The Governor may, in any case where application is made as aforesaid, order that the provisions of this section shall apply to the officer, and thereupon the officer shall resign his office in the public service.

Officers  
contesting  
elections for  
Parliament.  
1668, 1925,  
s. 3.

(2) If the officer is not so elected he shall, upon application, if the period of his absence from the public service for the purposes of the election has not exceeded two months, be re-appointed to the office in the public service from which he resigned pursuant to subsection (1) of this section.

(3) Notwithstanding anything contained in this Act the re-appointment shall be made without examination or probation.

(4) The service of any such officer shall not be deemed not to be continuous by reason of any such absence, but he shall not be entitled to be paid any sum by way of salary or allowance in respect of the period of his absence.

(5) The said period of absence shall not be taken into account for the purposes of computing the length of the continuous service of the officer for the purposes of section 75 of this Act.

(6) For the purposes of this section all persons in the employ of the Government of the State shall be deemed to be officers in the public service, and the public service shall, for the said purposes, be deemed to comprise the said persons.

No compensation in consequence of operation of Act.  
1259, 1916,  
s. 73.

**71.** No officer shall be deemed to be entitled to any compensation by reason of any reduction of his salary or other remuneration, or any alteration of the limits of salary of his class or grade, or any alteration in the scale of his allowances or expenses, made by or under the Acts repealed by this Act or by or under this Act, or any Act amending this Act or by regulation.

Officer not to engage in duties unconnected with his office.  
1259, 1916,  
s. 74.  
1385, 1919,  
s. 9.

**72.** (1) Except pursuant to such arrangement as authorised by section 46 or 47, or with the express permission of the Minister, given upon the recommendation of the Commissioner, which permission may at any time be withdrawn, no officer shall—

- i. accept or continue to hold an office in or under the Government of the Commonwealth:
- ii. accept or continue to hold or discharge the duties of or be employed in a paid office in connection with any banking, insurance, mining, mercantile, or other commercial business, whether the same is carried on by any corporation, company, firm, or individual:
- iii. engage in or undertake any such business, whether as principal or agent:
- iv. engage or continue in the private practice of any profession, trade, or business:
- v. accept or engage in any paid employment other than in connection with the duties of his office or offices in the public service.

(2) Nothing herein contained shall be deemed to prevent an officer from becoming a member or shareholder of any incorporated company or of any company or society of persons registered under any Act in this State or elsewhere.

No action to lie in respect of discharge of the Act.  
1259, 1916,  
s. 66.  
1716, 1925,  
s. 23.

**73.** (1) No action or suit shall be brought or maintained against any person or body for any misfeasance or non-feasance in connection with the carrying out, or attempted carrying out, of any provision of this Act.

(2) Except so far as expressly provided by this Act, no action, suit, or other proceeding shall lie, nor shall any costs

be payable, in respect of any proceeding before the board or any member thereof, or before the Commissioner or any person to whom any power or function of the board or the Commissioner is delegated under this Act.

*Provisions as to Leave of Absence.*

74. (1) The Commissioner may at such times as he deems convenient grant to any officer who has been not less than one year continuously in the public service, leave of absence for recreation not exceeding two weeks or, in the case of an officer whose ordinary duties require him to work on more than six days in the week, three weeks, during any one financial year: Provided that the Commissioner may, if he thinks fit, permit such leave to accumulate to an extent not exceeding four weeks.

Leave of absence for recreation and sickness.  
1259, 1916, s. 67.  
1716, 1925, s. 24.  
2136, 1933, s. 5.

(2) In the case of illness, or other pressing necessity, the Minister may grant to any officer leave of absence not exceeding sixteen days on full pay during any one year: Provided that, subject to such conditions as are prescribed, the Minister may permit such leave to accumulate to an extent not exceeding sixteen weeks in the case of officers whose continuous service does not exceed ten years, and not exceeding thirty-two weeks in the case of officers whose continuous service exceeds ten years:

Provided further that if immediately before his appointment to the public service any officer was employed under the Education Act, 1915, his continuous service under that Act shall for the purpose of this subsection be continuous service in the public service, and any leave of absence on account of ill-health or pressing necessity granted to him under the Education Act, 1915, or any regulation thereunder shall, for the purpose of computing the leave of absence which may be granted to him under this subsection, be deemed to have been granted to him under this subsection.

75. (1) The Governor may grant to any officer in the public service of at least ten years' continuous service leave of absence not exceeding eight months on half salary; or, at the option of the officer, not exceeding four months on full salary; or, if of twenty years' continuous service, eight months' leave of absence on full salary: Provided that—

Long leave of absence granted by the Governor.

1259, 1916, s. 68.  
1385, 1919, s. 8.  
1420, 1920, s. 3.  
1554, 1923, s. 4.  
1668, 1925, s. 4.  
1716, 1925, s. 25.  
2042, 1931, s. 8.

i. in the case of an officer to whom, before the twenty-first day of December, eighteen hundred and ninety-four (being the date of the passing of the Civil Service

No. 607 of  
1894.

No. 3 of 1881.

No. 900 of  
1905.

Amendment Act of 1894), leave of absence could not be granted under section 3 of the Civil Service Amendment Act, 1881, no service before the said twenty-first day of December shall be taken into account for the purposes of this section:

- ii. in the case of an officer who entered the public service, or became an employee of the Government of the State, after the ninth day of December, nineteen hundred and five (being the date of the passing of the Civil Service Further Amendment Act, 1905), the length of the leave of absence which may be granted under this section shall be reduced by one-half thereof.

(2) The Governor may, in case of illness or other pressing necessity, grant such extension as he thinks fit of the leave of absence granted under this section, on such terms as he thinks fit.

(3) Notwithstanding any provision of the South Australian Railways Commissioner's Act, 1936—

- (a) the provisions of subsections (1) and (2) hereof, except the provisos to subsection (1), shall apply to all persons in the service of the South Australian Railways holding the offices mentioned in the second schedule to this Act, and also to all persons holding such (if any) other offices in the said service, and to such (if any) other persons in the said service, as are ordered by the Governor in Council to be within the application of this subdivision of this subsection;
- (b) the provisions of subsections (1) and (2) hereof, including the provisos to subsection (1), shall apply to all other persons in the service of the South Australian Railways.

(4) The power to make regulations conferred by section 132 of the South Australian Railways Commissioner's Act, 1936, shall not extend to regulations as to the granting to employees of such leave of absence as is provided for by this section.

(5) For the purposes of this section, all persons in the employ of the Government of the State (except any officers or class of officers or the officers of any department, to whom or to which it is provided by any Act that this section shall

s. 75. (3) and (4) Pursuant to the Acts Republication Act, 1934, the following changes have been made in s. 75 (3) and (4):—(a) The expression "any provision of the South Australian Railways Commissioner's Act, 1936," has been substituted for "section 4 or any other provision of The South Australian Railways Commissioners Act, 1887." (b) The expression "section 132 of the South Australian Railways Commissioner's Act, 1936," has been substituted for "section 29 of The South Australian Railways Commissioners Act, 1887."

not apply) shall be deemed to be officers in the public service, and shall be entitled to all the privileges conferred by this section as if they had been officers in the public service from the time of the commencement of their employment by the Government of the State.

(6) For the purposes of this section, the length of service of an officer shall be computed from the commencement of his continuous service or probationary appointment, and service shall be deemed "continuous" notwithstanding absence on any leave with or without pay.

(7) If an officer pursuant to any arrangement operating in his department does not work on every working day, but works at least three days in every week, or six days in every fortnight, his service shall nevertheless be deemed to be continuous; but in such a case in computing his service for the purpose of leave under this section he shall be credited with one week's service for every six days on which he actually works, although the said days may be spread over two or more weeks. Saturday shall be regarded as a full day for the purpose of computing the said leave.

This subsection applies to any employee who has worked part time under any such arrangement since the nineteenth day of May, nineteen hundred and thirty.

(8) If any person to whom there is power to grant leave of absence under this section dies—

(a) before the commencement or during the currency of any leave so granted; or

(b) before such leave has been granted,

the Governor may, in respect of the period of the leave so granted or the unexpired portion thereof, or in respect of the period of the leave which might have been granted (according to the circumstances of the case), pay to the dependants (if any) of such person the amounts of salary which would have been payable to such person himself if he had survived.

Any question as to—

- i. whether there are any dependants in any particular case, or who are the dependants:
- ii. what dependant or dependants shall be entitled to the benefit of payments made under this subsection, and in what proportions if more than one dependant,

shall be settled by the Governor, as he deems proper.

In this subsection the term—

“dependants” means those members of the family of a person who were wholly or in part dependent upon his earnings at the time of his death:

“members of the family” includes wife or husband, parents, grand-parents, step-parents, children, grand-children, step-children, brothers, sisters, half-brothers, and half-sisters.

(9) The provisions of section 72 shall not apply to any officer to whom long leave of absence has been granted under this section and who is on long leave of absence, if the Governor is satisfied that that officer intends upon the expiry of his long leave of absence to retire from the public service.

(10) Where leave is granted to any officer under this section, the Minister may, at the commencement of such leave, pay to that officer the total salary which would be payable to him during the currency of the leave.

Rights of officers transferred from Commonwealth public service.  
1259, 1916,  
s. 47a.  
1716, 1925,  
s. 17.

**76.** (1) Where a person becomes an officer of the public service of the State and his service in such public service is continuous with permanent service in the public service of the Commonwealth, the continuous service of that person in the public service of the Commonwealth shall be for the purposes of leave of absence under sections 74 and 75 of this Act reckoned as service in the public service of the State.

(2) This section shall be deemed to have commenced on first day of January, nineteen hundred and twenty-four.

Public holidays.  
1259, 1916,  
s. 69,  
No. 1010 of  
1910

**77.** (1) Nothing in this Act shall be construed as affecting the provisions of the Holidays Act, 1910: Provided that the Governor may, by proclamation, declare that a day specified therein shall be a holiday with regard to any department, either in addition to or in substitution for any public holiday, in which case the offices connected with such department shall be closed on that day: Provided nevertheless that nothing in this Act or such proclamation shall prevent the Minister from requiring the services of any officer of such department during such day in case of emergency.

(2) When, under the Holidays Act, 1910, or this Act, the services of any officer are required by the Minister on any public holiday or departmental holiday, such officer shall be entitled to another day in lieu thereof.

## PART VI.

## PART VI.

## MISCELLANEOUS.

**78.** Notice of every appointment, transfer, retirement, vacation of office, or dismissal of an officer, and of every order-in-Council or proclamation under this Act, shall be published in the *Gazette* within twenty-eight days after the same is made or occurs, and such notice shall be conclusive evidence of such appointment, transfer, retirement, vacation of office, dismissal, or order-in-Council or proclamation.

Notices, &c.,  
to be published in the  
*Gazette*.  
1259, 1916.  
s. 71.

**79.** (1) In the event of the address for the time being of an officer being unknown to the board, Commissioner, permanent head, or Minister (as the case may be) all notices, orders, or communications to or for such officer may be posted to the last known address of such officer, and a notification of the fact of such posting shall be published in the *Gazette*.

Notice to  
officer whose  
address is  
unknown.  
1259, 1916.  
s. 72.

(2) Compliance with subsection (1) of this section shall be deemed a sufficient service of such notice, order, or communication on such officer.

(3) In case any such notice, order, or communication relates to any charge made against an officer, then, if within a time specified in such notice, order, or communication no answer is received by the authority asking whether the officer admits the truth of such charge, he shall be deemed to deny the truth of such charge, and such charge may be inquired into and dealt with in the absence of such officer.

**80.** (1) In addition to any power by this Act conferred on the Governor to make regulations as to any matter (which power shall in every case be implied for the purposes of any section in this Act in which regulations are referred to, or in which the word "prescribed" is used), the Governor may, on the recommendation of the board, make any regulations which may be necessary or convenient for the carrying out of any of the provisions of this Act, or for better effecting the objects of this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

Regulations.  
1259, 1916,  
s. 75.  
1716, 1925.  
s. 26.

- i. for regulating the performance by the Commissioner of his duties and functions:
- ii. for regulating the appointment of officers of the public service:

- iii. for the arrangement of the public service in its prescribed divisions; for facilitating the working of the public service; the classification of the work therein; and the classification of officers:
- iv. for prescribing the conditions under which officers of a division may be transferred to any specified offices in another division:
- v. for regulating examinations (whether entrance examinations or not), for fixing the fees payable for entrance examinations, and for registering in the order of merit the names of all persons who have passed the entrance examinations, and of those candidates who, having qualified at any such examination, are appointed to fill subsequent vacancies arising within a prescribed period:
- vi. for prescribing the rates of salaries or wages for women employed in the public service, and the terms upon which the service of female officers may be dispensed with upon their marriage: Provided, that nothing in any regulation shall be taken to permit the employment of any married woman except upon the certificate of the Commissioner in each case that such employment is desirable:
- vii. for regulating and determining the scales or amounts of the allowances or expenses to be made to officers for transfer or travelling, or in lieu of quarters, or for living at isolated stations, or in places where, owing to their situation, the cost of living is exceptionally high, and providing for the relief and transfer of officers employed for the prescribed period in any such locality, or for the partial reimbursement of the cost of conveyance of such officers, their wives and families, when such officers are travelling on recreation leave:
- viii. for regulating the duties of officers, and the mode in which such duties shall be performed, and for regulating the conduct of officers:
- ix. for prescribing the mode of registering applicants for temporary employment, and the mode of keeping the register, and the mode of selecting persons therefrom, and the method of dealing with or punishing persons temporarily employed, and for regulating generally the terms and conditions of any temporary employment:

- x. for regulating the hours of attendance of officers, and the keeping and signing of records of attendances, or prescribing other methods of recording attendances:
- xi. for regulating the granting of leave of absence to officers:
- xii. for regulating the performance of and payment of officers for extra services:
- xiii. for regulating the payment of examiners:
- xiv. for fixing the amount and nature of the security to be given for the fidelity of officers occupying positions the nature of which, in the opinion of the Commissioner, renders it necessary for such officers to find security for their fidelity:
- xv. for fixing, subject to the provisions of this Act, the maximum or minimum age of persons who may be appointed to any particular division or class or grade, or to any particular office:
- xvi. for providing for notification to the Commissioner of every punishment inflicted on any officer by virtue of this Act, and for keeping records thereof:
- xvii. for determining the dates, times, or periods of time at or within which shall be done any things and acts required or permitted by this Act to be done, and in respect of which no dates, times, or periods of time are specifically provided:
- xviii. for notifying vacancies, and the method of applying for appointment to fill vacancies:
- xix. for prescribing the allowances to be paid to witnesses for their attendance and expenses:
- xx. for prescribing, where there is no provision in this Act, or no sufficient provision, in respect of any matter or thing necessary to give effect to this Act, in what manner and form the want or insufficiency of provision shall be met:
- xxi. for fixing penalties, not exceeding in any case twenty pounds for the breach of any regulation, and for deducting such penalties from the salaries or

other remuneration of officers committing such breaches:

xxii. for regulating all matters in connection with appeals to the board.

(2) Any regulation may be made to apply either generally or with respect to any particular case or class of cases, or any particular officer, or class, or grade of officers, or the officers in any particular place.

Provision of moneys for purposes of the Act. 1259, 1916, s. 76.

81. The moneys required for the purposes of this Act shall, except where express provision is made in this Act for any such moneys, be paid out of moneys provided by Parliament for such purposes.

SCHEDULES.

Sec. 5.

THE FIRST SCHEDULE.

ACTS REPEALED.

No. and Year of Act.	Short Title of Act.
1259 of 1916 . . . . .	Public Service Act, 1916
1385 of 1919 . . . . .	Public Service Act Amendment Act, 1919
1516 of 1922 . . . . .	Public Service Act Amendment Act, 1922
1668 of 1925 . . . . .	Public Service Act Amendment Act, 1925
1716 of 1925 . . . . .	Public Service Act Amendment Act (No. 2), 1925
2042 of 1931 . . . . .	Public Service Act Amendment Act, 1931
2136 of 1933 . . . . .	Public Service Act Amendment Act, 1933

Sec. 75.

THE SECOND SCHEDULE.

- The South Australian Railways Commissioner.
- Secretary to the South Australian Railways Commissioner.
- General Traffic Manager.
- Chief Engineer for Railways.
- Chief Mechanical Engineer.
- Comptroller of Railways Accounts.
- Chief Assistant Engineer.
- Accountants.
- Assistant Engineers.
- Bookkeeper (Comptroller of Accounts Branch).
- Bookkeeper (Locomotive Branch).

Chief Audit Inspector.  
 Chief Clerk (Railways Commissioner's Office).  
 Chief Clerk (General Traffic Manager's Branch).  
 Chief Clerk (Chief Engineer for Railways Branch).  
 Chief Clerk (Chief Mechanical Engineer's Branch).  
 Chief Clerk (Traffic Audit Office).  
 Collector of Accounts (Senior).  
 District Locomotive Superintendents.  
 Draughtsmen in Charge.  
 Goods Superintendent.  
 Out-door Running Superintendent.  
 Passenger Superintendent.  
 Paymaster.  
 Railway Electrician.  
 Receiver.  
 Resident Engineers.  
 Superintendent of Station Services.  
 Traffic Auditor.  
 Traffic Superintendents.  
 Works Manager.

### Regulations.

The following regulations were in force under this Act on 26th July, 1937:—

#### GENERAL REGULATIONS—

*Gazette*—16th February, 1922, p. 569.

#### AMENDMENTS AND ADDITIONS TO THE GENERAL REGULATIONS—

*Gazette Extraordinary*—18th October, 1926, p. 965 (Nos. 2-10, inclusive, not now in force).

*Gazette*—20th March, 1924, p. 711.

19th June, 1924, p. 1360.

10th May, 1928, p. 964.

1st November, 1928, p. 978.

14th August, 1930, p. 296.

3rd September, 1936, p. 418.

12th November, 1936, p. 1065.

#### PROCLAMATIONS AS TO DEPARTMENTS OF THE PUBLIC SERVICE AND PERMANENT HEADS THEREOF—

The following proclamations as to the departments of the Public Service were in force on the 26th July, 1937:—

*Gazette*—14th June, 1917, p. 992.

30th January, 1919, p. 231.

4th September, 1919, p. 517.

4th December, 1919, p. 1411.

## Regulations—continued.

PROCLAMATIONS AS TO DEPARTMENTS OF THE PUBLIC SERVICE  
AND PERMANENT HEADS THEREOF—*continued.*

- 22nd July, 1920, p. 117.
- 28th October, 1920, p. 1119.
- 13th October, 1921, p. 866.
- 23rd February, 1922, p. 641.
- 29th March, 1923, p. 689.
- 31st March, 1927, p. 741.
- 7th April, 1927, p. 791.
- 16th June, 1927, p. 1301.
- 8th December, 1927, p. 1514.
- 13th December, 1928, p. 1214.
- 31st January, 1929, p. 217.
- 28th March, 1929, p. 635.
- 3rd October, 1929, p. 802.
- 13th November, 1930, p. 985.
- 20th November, 1930, p. 1025.
- 2nd April, 1936, p. 734.
- 2nd July, 1936, p. 1.
- 8th October, 1936, p. 698.