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1988, No. 20

An Act—

- (a) To ensure that employees in the State services are imbued with the spirit of service to the community; and
- (b) To promote efficiency in the State services; and
- (c) To ensure the responsible management of the State services; and
- (d) To maintain appropriate standards of integrity and conduct among employees in the State services; and

- (e) To ensure that every employer in the State services is a good employer; and
- (f) To promote equal employment opportunities in the State services; and
- (g) To provide for the negotiation of conditions of employment in the State services; and
- (h) To repeal the State Services Act 1962, the State Services Conditions of Employment Act 1977, and the Health Service Personnel Act 1983

[30 March 1988

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the State Sector Act 1988.

(2) This Act shall come into force on the 1st day of April 1988.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Agreement” means an agreement registered by the Arbitration Commission in settlement of a dispute of interest between the parties to it by means of the procedure described in section 164 of the Labour Relations Act 1987 or in this Act; and includes a composite agreement under section 166 of the Labour Relations Act 1987:

“Appropriate Minister”, in relation to a Department, means—

(a) The Minister responsible for the Department; or

(b) Where 2 or more Ministers are responsible for different functions of a Department, the Minister responsible for the relevant function of the Department:

“Arbitration Commission” means the Arbitration Commission constituted under the Labour Relations Act 1987:

“Arbitration Commissioner” means a member of the Arbitration Commission:

“Award” means an award registered by the Arbitration Commission in settlement of a dispute of interest between the parties to it by means of the procedure described in sections 134 to 151 of the Labour Relations Act 1987 or in this Act; and—

(a) Includes a composite award under section 137 of the Labour Relations Act 1987; but

- (b) Does not include a young worker award under section 157 of the Labour Relations Act 1987:
- “Chief executive”, in relation to a Department, means, subject to section 44 of this Act, the person holding office under section 31 of this Act, as the chief executive of the Department:
- “Chief Mediator” means the Chief Mediator appointed under the Labour Relations Act 1987:
- “Commission” means the State Services Commission:
- “Commissioner” means a member of the Commission:
- “Conditions of employment”—
- (a) Includes remuneration; but
 - (b) Does not include—
 - (i) Allowances payable to employees serving outside New Zealand; or
 - (ii) Other conditions of service of employees serving outside New Zealand:
- “Coverage clause” has the meaning given to it by section 2 (1) of the Labour Relations Act 1987:
- “Dispute of interest” has the meaning given to it by section 2 (1) of the Labour Relations Act 1987:
- “Department” means any Department specified in the First Schedule to this Act:
- “Education service”—
- (a) Means employment in any capacity under the control of—
 - (i) The Director-General of Education other than employment in the Department of Education; or
 - (ii) Any Board, Council, or other controlling authority established under the Education Act 1964; and
 - (b) Includes employment—
 - (i) As a teacher in a free kindergarten; or
 - (ii) In any capacity in an integrated school within the meaning of the Private Schools Conditional Integration Act 1975:
- “Employee”, in relation to the State services,—
- (a) Means an employee in any part of the State services, whether paid by salary, wages, or otherwise; but
 - (b) Does not include—
 - (i) Any chief executive; or
 - (ii) Any member of the senior executive service:

“Employer party” has the meaning given to it by section 2 of the Labour Relations Act 1987 except that, in relation to the Public Service, the Health Service, the Education Service, and the Parliamentary Service, it means—

(a) In the case of a proposed award or agreement, the Commission; and

(b) In the case of a personal grievance, the chief executive or general manager or acting general manager, as the case may require; and

(c) In the case of a dispute of rights, the chief executive or the general manager or the acting general manager, as the case may require, acting, as the Commission determines, together with or in consultation with the Commission:

“Health Service” means service in the employment of an area health board or a hospital board:

“Lockout” has the meaning given to it by section 232 of the Labour Relations Act 1987:

“Mediator” means a mediator appointed under the Labour Relations Act 1987:

“Minister” means the Minister of State Services:

“Public Service” means the Public Service as defined in section 27 of this Act:

“Remuneration” includes—

(a) Salary, wages, and other payments, whether in the form of bonuses or otherwise, in return for services; and

(b) Benefits and other emoluments (whether in money or not) in return for services:

“Senior executive service” means the senior executive service under Part IV of this Act:

“State enterprise” means an organisation named in the Second Schedule to this Act:

“State services”—

(a) Means all instruments of the Crown in respect of the Government of New Zealand, whether Departments, corporations, agencies, or other instruments; and

(b) Includes the Education service; but

(c) Does not include—

(i) The Governor-General; or

(ii) Any member of the Executive Council; or

(iii) Any Minister of the Crown; or

(iv) Any member of Parliament; or

(v) Any corporation listed in the First Schedule to the State-Owned Enterprises Act 1986:

“Strike” has the meaning given to it by section 231 of the Labour Relations Act 1987:

“Union party”, in relation to a proposed award or agreement, means the union or unions which covers or cover the employees who will be bound by the proposed award or agreement.

(2) For the purposes of this Act, an award is subsequent to another award if—

(a) It replaces that award, either wholly or partially; or

(b) It replaces, either wholly or partially, any such replacement award or any replacement of such an award,—

and such a relationship shall continue to exist between awards notwithstanding the number of replacement awards that have been negotiated or the period that has intervened; and an award precedes another in corresponding circumstances.

Cf. 1962, No. 132, s. 2; 1969, No. 64, s. 55 (2); 1973, No. 15, s. 3 (2); 1977, No. 95, s. 2 (1); 1986, No. 124, s. 32 (1); 1987, No. 81, s. 2 (1)

PART I

THE STATE SERVICES COMMISSION

3. State Services Commission—There shall continue to be a commission to be known as the State Services Commission, and a Department of State to be known as the Office of the State Services Commission.

Cf. 1962, No. 132, s. 3 (1)

Duties, Functions, and Powers of Commission

4. Duties of Commission in relation to administration of Act—The Commission shall be responsible to the Minister for the administration of this Act.

Cf. 1962, No. 132, s. 10 (1)

5. Duty of Commission to act independently—Notwithstanding anything in section 4 of this Act, but subject to sections 35, 36, 38, and 39 of this Act, in matters relating to decisions on individual employees, the Commission shall not be responsible to the Minister but shall act independently.

Cf. 1962, No. 132, s. 10 (1)

6. Functions of Commission in relation to Public Service—The principal functions of the Commission are—

- (a) To review the machinery of government including—
 - (i) The allocation of functions to and between Departments; and
 - (ii) The desirability of or need for the creation of new Departments and the amalgamation or abolition of existing Departments; and
 - (iii) The co-ordination of the activities of Departments:
- (b) To review the efficiency, effectiveness, and economy of each Department, including the discharge by the chief executive of his or her functions:
- (c) To negotiate conditions of employment of employees in the Public Service:
- (d) To promote, develop, and monitor in each Department personnel policies and standards of personnel administration:
- (e) To promote, develop, and monitor in each Department equal employment opportunities policies and programmes:
- (f) To furnish to each Department advice on, and assistance with, the training and career development of staff:
- (g) To provide advice to each Department on management systems, structures, and organisations:
- (h) To exercise such other functions with respect to the administration and management of the Public Service as the Prime Minister from time to time directs (not being functions conferred by this Act or any other Act on a chief executive).

Cf. 1962, No. 132, s. 12 (1) (a)-(c), (f), (g)

7. Powers of Commission—The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions and duties under this Act or any other enactment.

Cf. 1962, No. 132, s. 10 (2)

8. Power of Commission to conduct inspections and investigations—The Commission may from time to time, in carrying out its functions in respect of the Public Service,—

- (a) Conduct such inspections and investigations; and
 - (b) Make and receive such reports,—
- as the Commission considers necessary or the Minister directs.

Cf. 1962, No. 132, s. 12 (2)

9. Power to obtain information from Departments—

(1) The Commission may from time to time give a Department notice in writing requiring the Department to supply to the Commission information concerning the Department's activities.

(2) Every Department shall comply with any notice given to it under subsection (1) of this section and shall keep such records as are necessary to enable it to comply with the notice.

(3) Nothing in this section derogates from any Act that imposes a prohibition or restriction on the availability of any information.

10. Power to enter premises—(1) For the purpose of carrying out its functions, the Commission may from time to time, by any member of the Commission or by any person specifically or generally authorised in writing in that behalf by the Commission,—

- (a) Enter the premises of any Department; or
- (b) Require the production of any information, documents, or files in the custody of any Department, and examine any such information, documents, or files; or
- (c) Require any member of the staff of any Department to answer questions for the purpose of enabling the Commission to carry out its functions.

(2) Every written authorisation under subsection (1) of this section shall contain—

- (a) A reference to this section; and
- (b) The full name of the authorised person; and
- (c) A statement of the powers conferred on the authorised person by subsection (1) of this section.

(3) The power to enter premises pursuant to subsection (1) of this section shall be subject to the following conditions:

- (a) Entry shall be made only by a member of the Commission or by a person specifically or generally authorised in writing by the Commission:
- (b) Reasonable notice of the intention to enter shall be given:
- (c) Entry shall be made at reasonable times:
- (d) The person entering shall carry—
 - (i) Evidence of that person's identity; and
 - (ii) Either evidence that that person is a member of the Commission or that person's written authorisation under subsection (1) of this section:
- (e) The person entering shall, on first entering the premises, and, if requested, at any subsequent time, produce to a representative of the Department the evidence referred to in paragraph (d) of this subsection.

(4) Every person shall have the same privileges in relation to—

- (a) The production of information, documents, and files; and
- (b) The furnishing of any information or particulars; and
- (c) The answering of questions—

under this section as witnesses have in Courts of law.

(5) No person shall exercise any of the powers conferred by paragraphs (a) to (c) of subsection (1) of this section unless the Commission or that person has first given the chief executive of the Department the opportunity of consulting with the Commission or that person about the exercise of those powers.

(6) Nothing in this section derogates from any enactment that imposes a prohibition or restriction on—

- (a) The availability of any information; or
- (b) The production or examination of any information, documents, or files.

11. Exercise of functions and powers in respect of other State services—(1) The Prime Minister may from time to time direct the Commission, in writing, to carry out, in respect of any part of the State services that does not form part of the Public Service, any of the functions and powers conferred on the Commission by any provision of sections 6 to 10 of this Act.

(2) Sections 6 to 10 of this Act shall apply, for the purposes of any direction under subsection (1) of this section with all necessary modifications and as if the part of the State services to which the direction relates were a Department.

(3) The Commission shall comply with that direction and shall have all necessary powers to enable it to do so.

(4) The Commission shall, when requested by the head of, or the Minister in charge of or responsible for, any part of the State services, exercise in respect of that part of the State services any of the functions and powers that the Commission may exercise in respect of Departments under any provision of sections 6 to 8 of this Act.

(5) Nothing in this section—

- (a) Limits or affects any provision of any other Act; or
- (b) Affects or prevents the exercise by any part of the State services that does not form part of the Public Service, or by any officer or employee of any such part of the State services, of any function or power conferred on or belonging to any such part of the State services or any such officer or employee.

Cf. 1962, No. 132, s. 11

12. Membership—(1) The Commission shall consist of not more than 4 persons, who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister.

(2) One Commissioner shall be appointed by the Governor-General in Council as the Chief Commissioner of the Commission, and shall be the chief executive of the Office of the State Services Commission.

(3) Where the Commission comprises or is to comprise 2 or more Commissioners, another Commissioner may be appointed by the Commission as the Deputy Chief Commissioner of the Commission.

(4) A Deputy Chief Commissioner shall have power to act in place of the Chief Commissioner in the event of the incapacity of the Chief Commissioner by reason of illness or absence or any other cause.

Cf. 1962, No. 132, s. 3 (2), (3)

13. Term of office—(1) Every Commissioner shall be appointed for such term, not exceeding 5 years, as shall be specified in the Order in Council by which the Commissioner is appointed.

(2) Every Commissioner shall be eligible for reappointment from time to time.

(3) Where a person who is an employee of the State services is appointed as a Commissioner, that person's term of office as a Commissioner shall be deemed, for the purposes of—

- (a) The Government Superannuation Fund Act 1956; and
- (b) Appointment to any position in the State services on the termination of that person's service as a Commissioner; and

(c) Entitlement to leave of absence,—
to be continuous service in that part of the State services in which that person was employed at the date of that person's appointment as a Commissioner.

Cf. 1962, No. 132, s. 3 (4), (6)

14. Deputies—(1) In the event of the incapacity of any Commissioner by reason of illness or absence or any other cause, the Governor-General in Council, on the recommendation of the Prime Minister, may appoint a deputy to act for the Commissioner during that incapacity, and any such deputy shall, while acting as such, be deemed for all purposes to be a member of the Commission.

(2) No appointment of a deputy, and no act done by a deputy as such, shall in any proceedings be questioned on the ground that the occasion for his or her appointment had not arisen or had ceased.

Cf. 1962, No. 132, s. 3 (7)

15. Remuneration and expenses of Commissioners—

(1) The Commissioners shall be paid—

- (a) Such remuneration as may from time to time be determined, either generally or in respect of any particular Commissioner or Commissioners, by the Higher Salaries Commission; and
- (b) Such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time by the Minister of Finance.

(2) Subject to the Higher Salaries Commission Act 1977, any determination made under subsection (1) of this section may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before or after the date of the making of the determination.

(3) Every determination made under subsection (1) of this section in respect of which no date is specified as aforesaid shall come into force on the date of the making of the determination.

Cf. 1962, No. 132, s. 3 (9), (9A), (9B); 1985, No. 135, s. 9 (2)

16. Removal from office—(1) Any Commissioner may be suspended or removed from office in accordance with the following provisions of this section and not otherwise.

(2) The Governor-General may suspend any Commissioner from office for misbehaviour or incompetence, but a Commissioner shall not be removed from office except as provided in this section.

(3) The Governor-General shall cause to be laid before the House of Representatives a full statement of the grounds of any suspension within 7 sitting days after the date of that suspension.

(4) Unless the House of Representatives, within 21 days from the date on which the statement in respect of any Commissioner suspended under this section has been laid before it, declares by resolution that he or she ought to be removed from office, the Commissioner shall be deemed to be restored to office as from the date of his or her suspension; and

if the House of Representatives within the said time does so declare, the Commissioner shall be removed by the Governor-General from the date of the suspension.

(5) Unless the Governor-General in Council otherwise directs, a Commissioner who has been removed from office under this section shall not be entitled to be reappointed to the State services and shall not be entitled to a retiring allowance under the Government Superannuation Fund Act 1956.

Cf. 1962, No. 132, s. 4

17. Vacation of office—(1) A Commissioner shall be deemed to have vacated office if the Commissioner—

- (a) Without the approval of the Governor-General—
 - (i) Engages during his or her term of office in any paid employment or business other than the duties of his or her office; or
 - (ii) Is appointed to and accepts any other office or position in the State services:
- (b) Becomes bankrupt, compounds with his or her creditors, or makes an assignment of his or her salary for their benefit:
- (c) Absents himself or herself from duty except with the authority of the Governor-General or of the Commission:
- (d) Resigns in writing under his or her hand addressed to the Governor-General.

(2) Notwithstanding anything in this section, a Commissioner may act by direction of the Commission temporarily in any position in any Department or organisation that is for the time being vacant.

Cf. 1962, No. 132, s. 5

18. Superannuation rights of Commissioners—On the termination of the appointment of any Commissioner who was a contributor to the Government Superannuation Fund when he or she was appointed as a Commissioner, that Commissioner shall, unless—

- (a) He or she is reappointed as a Commissioner or appointed to another office in the Government service (within the meaning of the Government Superannuation Fund Act 1956); or
- (b) He or she has ceased to be a contributor to the Government Superannuation Fund; or
- (c) He or she is not entitled under section 16 (5) of this Act to a retiring allowance,—

be entitled to receive from the Fund an annual retiring allowance for the rest of his or her life computed in the manner prescribed by Part II or Part IIA of the Government Superannuation Fund Act 1956, notwithstanding that the Commissioner may not have attained the age or have had the length of service that would entitle him or her in accordance with the terms of that Act to a retiring allowance.

Cf. 1962, No. 132, s. 6; 1986, No. 132, s. 35

19. Meetings of Commission—(1) Meetings of the Commission shall be held at such times and places as the Chief Commissioner of the Commission from time to time appoints.

(2) At any meeting of the Commission, the Chief Commissioner or, if the Chief Commissioner is not present, the Deputy Chief Commissioner shall have a deliberative vote, and, in the case of any equality of votes, shall also have a casting vote.

(3) All questions before the Commission shall be determined by a majority of the valid votes recorded thereon.

(4) This section shall have no application while the Commission for the time being consists of only 1 member.

Cf. 1962, No. 143, s. 7

20. Quorum—At all meetings of the Commission while it comprises 2 or more members, 2 members shall form a quorum.

Cf. 1962, No. 132, s. 8

21. Procedure of Commission—Subject to the provisions of this Act, the Commission may regulate its procedure and exercise its functions in such manner as it thinks fit.

Cf. 1962, No. 132, s. 9

22. Annual report—(1) The Commission shall, as soon as practicable after the end of each financial year, furnish to the Minister a report on the operations of the Commission for that year, and on such other matters affecting the State services as the Commission thinks fit.

(2) The Minister shall lay a copy of the report before the House of Representatives as soon as practicable after its receipt by the Minister.

Cf. 1962, No. 132, §. 13

23. Delegation of functions or powers—(1) The Commission may from time to time, either generally or particularly, delegate to any of its members or to any other person or persons any of its functions or powers, including functions or powers delegated to the Commission under any Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include—

(a) The power to delegate under this section; or

(b) The Commission's powers under sections 35 and 36 of this Act (which relate to the appointment and reappointment of chief executives); or

(c) The Commission's powers under section 39 of this Act (which relates to the removal from office of a chief executive); or

(d) The Commission's powers under section 52 (4) of this Act (which relates to the provisions that apply upon the termination of the employment of a person who holds a position in the senior executive service); or

(e) The Commission's powers under section 53 of this Act (which relates to the removal from office of any person employed in the senior executive service).

(4) In any case where the Commission has, pursuant to subsection (1) of this section, delegated any of its functions or powers to any person, that person may, with the prior approval in writing of the Commission, delegate such of those functions or powers as the Commission approves to any other person or to the holder for the time being of any specified office in the State services.

(5) Subject to any general or special directions given or conditions imposed by the Commission, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(6) Every Commissioner and every other person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or of specified classes of offices.

(8) No such delegation shall affect or prevent the exercise of any function or power by the Commission, nor shall any such

delegation affect the responsibility of the Commission for the actions of any person acting under the delegation.

Cf. 1962, No. 132, s. 14 (1)–(6)

24. Revocation of delegations—(1) Every delegation under section 23 of this Act shall be revocable in writing at will.

(2) Any such delegation shall, until it is revoked, continue in force according to its tenor, notwithstanding any changes in the membership of the Commission.

Cf. 1962, No. 132, s. 14 (6), (7)

25. Power to summon witnesses—(1) For the purposes of carrying out the duties and functions imposed on the Commission by this Act or any other Act, the Commission or any Commissioner shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the Commissions of Inquiry Act 1908, and the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

(2) Any investigation or inquiry that the Commission is empowered to conduct under this Act or any other Act may be conducted by the Commission acting in its own right or by a Commissioner or other person specifically appointed by the Commission to conduct the investigation or inquiry and to report thereon to the Commission; and, for the purposes of any such investigation or inquiry, the powers and authority conferred on the Commission by subsection (1) of this section shall attach to and may be exercised by the Commissioner, or such other persons so appointed.

Cf. 1962, No. 132, s. 15

26. Fees and expenses in connection with investigation or inquiry—Notwithstanding anything in the Commissions of Inquiry Act 1908, the Commission may authorise the payment, out of money appropriated by Parliament for the purpose, of fees and expenses incurred in connection with any such investigation or inquiry.

Cf. 1962, No. 132, s. 16

PART II

THE PUBLIC SERVICE

27. Public Service defined—(1) The Public Service shall comprise the Departments specified in the First Schedule to this Act.

(2) The Governor-General may from time to time, by Order in Council, add to the First Schedule to this Act the name of any Department.

28. Delegation of functions or powers of appropriate Minister—(1) The appropriate Minister in relation to a Department may from time to time, either generally or particularly, delegate to the chief executive of that Department all or any of the Minister's functions and powers under this Act or any other Act, including functions or powers delegated to the Minister under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section.

(4) The power of the appropriate Minister to delegate under this section—

(a) Is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but

(b) Does not limit any power of delegation conferred on the Minister by any other Act.

(5) Subject to any general or special directions given or conditions imposed by the appropriate Minister, the chief executive may exercise any functions or powers so delegated to the chief executive in the same manner and with the same effect as if they had been conferred on the chief executive directly by this section and not by delegation.

(6) Where the chief executive purports to act pursuant to any delegation under this section, the chief executive shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) No such delegation shall affect or prevent the exercise of any function or power by the appropriate Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.

29. Revocation of delegations—(1) Every delegation under section 28 of this Act shall be revocable in writing at will.

(2) Any such delegation, until it is revoked, shall continue in force according to its tenor.

(3) In the event of the appropriate Minister by whom any such delegation has been made ceasing to hold office,—

- (a) It shall continue to have effect as if made by the person for the time being holding office as the appropriate Minister; and
- (b) The chief executive shall forthwith advise the then appropriate Minister of the terms of any such delegation.

(4) In the event of the chief executive to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as chief executive or, if there is no chief executive in office or if the chief executive is absent from duty, to the person for the time being directed to act in the place of the chief executive.

30. Annual reports of Departments—(1) As soon as practicable after the end of each financial year, the chief executive shall give to the Minister a report on the operations of the Department for that year.

(2) The Minister shall lay a copy of the report before the House of Representatives as soon as practicable after its receipt by the Minister.

(3) This section shall not derogate from any provision in any other Act requiring the chief executive to present an annual report, but it shall not be necessary for a chief executive to provide a separate report under each enactment.

PART III

CHIEF EXECUTIVES

31. Chief executives—(1) Each Department shall have, as its administrative head, a chief executive.

(2) Each chief executive shall be known—

- (a) By the designation fixed by Act of Parliament in respect of that chief executive; or
- (b) Where the designation of a chief executive is not fixed by Act of Parliament, by the designation given to that chief executive from time to time by the Prime Minister.

32. Principal responsibilities—The chief executive of a Department shall be responsible to the appropriate Minister for—

- (a) The carrying out of the functions and duties of the Department (including those imposed by Act or by the policies of the Government); and

- (b) The tendering of advice to the appropriate Minister and other Ministers of the Crown; and
- (c) The general conduct of the Department; and
- (d) The efficient, effective, and economical management of the activities of the Department.

33. Duty to act independently—Notwithstanding anything in section 32 of this Act, but subject to sections 51 and 52 of this Act, in matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, disciplining, or the cessation of the employment of any employee, or other matters), the chief executive of a Department shall not be responsible to the appropriate Minister but shall act independently.

34. Functions, responsibilities, duties, and powers—

(1) The functions, responsibilities, duties, and powers imposed on or given to the chief executive of a Department by this Act are in addition to those imposed on or given to that chief executive by or under any other Act.

(2) The chief executive of a Department shall have the powers necessary to carry out the functions, responsibilities, and duties imposed on that chief executive by or under this Act, as well as the powers necessary to carry out the functions, responsibilities, and duties imposed on that chief executive or that Department by or under any other Act.

35. Appointment of chief executives—(1) Subject to sections 36, 37, 44, and 91 of this Act, each chief executive shall be appointed by the Commission in accordance with the provisions of this section.

(2) Where there is a vacancy or an impending vacancy in the position of chief executive of a Department, the Commission shall—

- (a) Inform the Minister of that vacancy or impending vacancy; and
- (b) Invite the Minister to inform the Commission of any matters that the Minister wishes the Commission to take into account in making an appointment to the position.

(3) The Commission shall notify the vacancy or impending vacancy in such manner as it thinks sufficient to enable suitably qualified persons to apply for the position.

(4) The Commission may—

- (a) Examine applicants for the position; and
- (b) Seek advice from such sources as it considers relevant.

(5) The Commission may invite such other persons as it thinks fit to assist it to decide on the person to be recommended for appointment, and any person so invited may take part in the examination of applicants or in the Commission's deliberations on the matter or in both.

(6) The Commission shall forward to the Minister the name of the person recommended by the Commission for appointment to the position, together with full particulars of that person's qualifications.

(7) The Minister shall refer the Commission's recommendations to the Governor-General in Council.

(8) The Governor-General in Council shall decide whether the Commission's recommendation is to be accepted or declined.

(9) The Minister shall inform the Commission whether its recommendation has been accepted or declined by the Governor-General in Council.

(10) Where the Commission's recommendation is accepted, the Commission shall—

(a) Appoint the person recommended; and

(b) Announce publicly that the appointment has been made.

(11) Where the Commission's recommendation is declined, the following provisions shall apply:

(a) The Governor-General in Council may direct the Commission to appoint a named person to the position:

(b) The Governor-General in Council shall not be required to comply with the preceding subsections of this section:

(c) Notice of the making of an appointment pursuant to a direction under paragraph (a) of this subsection shall be published in the *Gazette* as soon as practicable.

(12) In deciding upon the person to be appointed as chief executive of a Department, the Commission or the Governor-General in Council, as the case may be, shall have regard to the need to appoint a person who—

(a) Can discharge the specific responsibilities placed on that chief executive; and

(b) Will imbue the employees of the Department with a spirit of service to the community; and

(c) Will promote efficiency in the Department; and

(d) Will be a responsible manager of the Department; and

(e) Will maintain appropriate standards of integrity and conduct among the employees of the Department; and

(f) Will ensure that the Department is a good employer; and

(g) Will promote equal employment opportunities.

36. Reappointment of chief executives—(1) The Commission may recommend under section 35 (6) of this Act that the existing chief executive of a Department be reappointed for a further term.

(2) The Commission may make a recommendation under subsection (1) of this section without first notifying the impending vacancy or examining other applicants.

37. Appointment and reappointment of Government Statistician—(1) Subject to section 91 of this Act, the Government Statistician shall be appointed by the Commission in accordance with the provisions of this section.

(2) Subject to subsection (5) of this section, the Commission shall appoint the Government Statistician after complying with subsections (2) to (5) and (12) of section 35 of this Act.

(3) Nothing in subsections (6) to (11) of section 35 or in section 36 of this Act shall apply in respect of the appointment or re-appointment of the Government Statistician.

(4) The Commission may from time to time reappoint the Government Statistician for a further term.

(5) The Commission may reappoint the Government Statistician without first notifying the impending vacancy or examining other applicants.

38. Conditions of employment of chief executives—(1) Every chief executive shall be appointed for a term of not more than 5 years.

(2) Every chief executive shall be eligible for reappointment from time to time.

(3) Except where specific conditions of employment for a chief executive are provided in this Act, the conditions of employment of a chief executive shall be determined in each case by agreement between the Commission and the chief executive, but the Commission shall obtain the agreement of the Prime Minister and the Minister of State Services to the conditions of employment before finalising those conditions of employment with the chief executive.

(4) In the case of the Government Statistician, the Commission shall not be required to obtain the agreement of the Prime Minister and the Minister of State Services before finalising the conditions of employment of the Government Statistician.

39. Removal from office—The Commission may, with the agreement of the Governor-General in Council, for just cause or excuse, remove the chief executive of a Department from office.

40. Acting chief executive—(1) In the case of absence from duty of a chief executive (from whatever cause arising) or on the occurrence from any cause of a vacancy in the position of a chief executive (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the functions, powers, and duties of the chief executive or pertaining to the position may be exercised and performed by a member of the senior executive service or an employee for the time being directed by the Commission to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(2) No such direction and no acts done by any person acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the person had not been appointed to the position of chief executive.

(3) The Commission shall determine the conditions of employment that are to apply to any person directed under subsection (1) of this section to exercise and perform any of the functions, powers, and duties of a chief executive.

41. Delegation of functions or powers—(1) The chief executive of a Department may from time to time, either generally or particularly, delegate to any other person (being a member of the senior executive service or an employee) any of the functions or powers of the chief executive under this Act or any other Act, including functions or powers delegated to the chief executive under this Act or any other Act:

Provided that the chief executive shall not delegate any functions or powers delegated to the chief executive by a Minister without the written consent of that Minister, or any functions or powers delegated to the chief executive by the Commission without the written consent of the Commission.

(2) In any case where the chief executive has, pursuant to subsection (1) of this section, delegated any functions or powers to any person, that person may, with the prior approval in writing of the chief executive, delegate such of those functions or powers as the chief executive approves to any other person (being a member of the senior executive service or an

employee) or to the holder for the time being of any specified office in that Department.

(3) Subject to any general or special directions given or conditions imposed by the chief executive, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(4) The power of the chief executive to delegate under this section—

(a) Is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the chief executive's functions or powers; but

(b) Shall not limit any power of delegation conferred on the chief executive by any other Act.

(5) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(6) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.

(7) No such delegation shall affect or prevent the exercise of any function or power by the chief executive, nor shall any such delegation affect the responsibility of the chief executive for the actions of any person acting under the delegation.

42. Revocation of delegations—(1) Every delegation under section 41 of this Act shall be revocable in writing at will.

(2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the chief executive by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that chief executive.

43. Review of performance of chief executive—(1) The Commission shall be responsible to the appropriate Minister or appropriate Ministers for reviewing, either generally or in respect of any particular matter, the performance of each chief executive.

(2) In carrying out its functions under subsection (1) of this section, the Commission shall report to the appropriate Minister or appropriate Ministers on the manner and extent to

which the chief executive is fulfilling all of the requirements imposed upon that chief executive, whether under this Act or otherwise.

44. Special provisions in relation to certain chief executives—(1) Nothing in sections 35, 36, 38, 39, 43, and 91 of this Act apply in respect of—

- (a) The Solicitor-General; or
- (b) The Controller and Auditor-General; or
- (c) The Commissioner of Police; or
- (d) The Chief Commissioner.

(2) For the purposes of this Act, but subject to subsection (1) of this section,—

- (a) The Solicitor-General shall be the chief executive of the Crown Law Office:
- (b) The Controller and Auditor-General shall be the chief executive of the Audit Department:
- (c) The Chief Commissioner shall be the chief executive in respect of the Office of the State Services Commission:
- (d) The Commissioner of Police shall be the chief executive in respect of the Police Department (civilian staff).

45. Application of Labour Relations Act 1987 in respect of chief executives—(1) No award or agreement that applies to or purports to apply to any position covered by this Part of this Act shall be registered under the Labour Relations Act 1987.

(2) Nothing in this Act—

- (a) Prevents a union membership rule from covering a chief executive; or
- (b) Prevents a chief executive belonging to the union whose membership rule covers that chief executive.

PART IV

SENIOR EXECUTIVE SERVICE

46. Object—The object of this Part of this Act is to require the Commission and the chief executives to provide and maintain for the Public Service a group of senior executives who—

- (a) Have the ability to manage, at the most senior level, Departments of the Public Service; and

- (b) By reason of their training and approach to management in the Public Service, shall constitute a unifying force at the most senior levels of the Public Service; and
- (c) Shall comprise the senior executive service of the Public Service.

47. Development and training—(1) The Commission shall be responsible, in consultation with chief executives, for developing the senior executive service so that its members—

- (a) Have both ability and integrity; and
- (b) Are imbued with a spirit of service to the community.

(2) The members of the senior executive service shall be appropriately trained to ensure that the highest standards both of efficiency and of management are maintained in the Public Service.

48. Senior executive service—(1) The Commission may from time to time designate senior positions in Departments as forming a part of the senior executive service.

(2) Any person appointed to a position designated under subsection (1) of this section as forming a part of the senior executive service shall be a member of the senior executive service, and the provisions of this Part of this Act shall apply to that person.

49. Limit on members—(1) Except as provided for in subsection (2) of this section, the number of positions for the time being designated as forming part of the senior executive service shall not exceed 500.

(2) The number of 500 may be altered from time to time by agreement between the Commission and a union designated for the purpose from time to time by the central organisation of workers within the meaning of the Labour Relations Act 1987.

50. Application of Labour Relations Act 1987 in respect of senior executive service—(1) No award or agreement that applies to or purports to apply to any position covered by this Part of this Act shall be registered under the Labour Relations Act 1987.

(2) Where, after the registration of any award or agreement, the Commission designates any position to which that award or agreement applies to be a position in the senior executive service, that position shall, with effect from the date specified in the award or agreement as the date on which it expires, cease

to be covered by the award or agreement as registered and that award or agreement shall be deemed to be amended accordingly.

(3) Nothing in this Act—

- (a) Prevents a union membership rule from covering members of the senior executive service; or
- (b) Prevents a member of the senior executive service belonging to the union whose membership rule covers that person.

51. Appointments to positions in the senior executive service—(1) Subject to subsection (2) of this section, all appointments to positions in the senior executive service shall be made by the chief executive of the Department in which the vacancy exists.

(2) The chief executive of a Department shall notify any vacancy or impending vacancy in that Department in respect of a position in the senior executive service.

(3) The notification shall be effected in a manner that will enable suitably qualified persons to apply for the position.

(4) The chief executive—

- (a) Shall consult with the Commission before making an appointment to any vacancy in any position in the senior executive service; and
- (b) Shall fully consider any persons nominated by the Commission as being suitably qualified and available for appointment to the vacancy.

(5) A chief executive in making an appointment to a position in the senior executive service shall give preference to the person who is best suited to the position.

(6) In deciding upon the person who is best suited to the position under subsection (5) of this section, the chief executive shall have regard to the need to appoint a person who can discharge the responsibilities of the position and who will assist the chief executive to—

- (a) Imbue the employees of the Department with a spirit of service to the community; and
- (b) Promote efficiency in the Department; and
- (c) Ensure the responsible management of the Department; and
- (d) Maintain appropriate standards of integrity and conduct among the employees of the Department; and
- (e) Ensure that the Department is a good employer; and
- (f) Promote equal employment opportunities.

52. Conditions of employment for senior executive service—(1) Every person appointed to a position in the senior executive service shall be appointed to that position for a term of not more than 5 years.

(2) Every person who holds a position in the senior executive service shall be eligible for reappointment.

(3) Except where specific conditions of employment for a person in the senior executive service are provided for in this Act, and subject to subsection (4) of this section, the conditions of employment of every person in the senior executive service shall be determined in each case by agreement between the chief executive and the person to be appointed, but the chief executive shall consult with the Commission before finalising the conditions of employment.

(4) The Commission shall determine, either generally or particularly, the provisions that are to apply upon the termination, under section 54 (2) (b) of this Act, of the employment of a person who holds a position in the senior executive service.

(5) The provisions determined, either generally or particularly, under subsection (4) of this section in relation to any person shall be included in that person's contract of service.

53. Removal from office—Subject to any contract of service, the chief executive of a Department may, after consultation with the Commission, for just cause or excuse, remove from office any person employed in the senior executive service of the Department.

54. Conditions where person not reappointed—(1) Where a person who has been appointed to a position in the senior executive service is not reappointed to that position at the expiration of his or her term of appointment, or for any reason whatever that appointment is terminated before the expiration of that term, other than as a result of an appointment to another position in the Public Service, or as a consequence of that person resigning from the Public Service, the chief executive of the Department shall forthwith notify the Commission of the decision and the reasons for that decision.

(2) Upon receipt of a notice from the chief executive under subsection (1) of this section, the Commission shall, at its option, either—

- (a) Place the person, under the employment of the Commission, on such duties as the Commission determines from time to time to be appropriate, in which case the Commission shall determine with the person concerned the conditions of employment that are to apply to that person during the period of employment under this paragraph; or
- (b) Terminate the person's employment in accordance with the provisions of that person's contract.

(3) No person who is assigned duties under subsection (2) (a) of this section shall be entitled to receive any payment in respect of the completion of any preceding term of office notwithstanding any conditions of employment negotiated under section 52 (3) of this Act to the contrary.

(4) The Commission shall determine from time to time the period for which a person is employed under subsection (2) (a) of this section.

(5) That period shall not be less than 2 years after the date of the expiration of the person's immediately preceding term of appointment.

(6) Employment of a person under subsection (2) (a) of this section shall end if, before the expiration of the period from time to time determined by the Commission, that person—

- (a) Is appointed to another position in the Public Service; or
- (b) Dies or resigns or otherwise ceases to be a member of the Public Service.

(7) Subject to the provisions of any particular contract, nothing in this Act shall prevent a person employed under this Part of this Act from being appointed to any other position, whether in the senior executive service or otherwise.

55. Training for senior executive service—(1) The Commission shall be responsible for arranging for the provision of appropriate training for persons in the senior executive service, and for persons who, in the opinion of the Commission, have the potential to be appointed to positions in the senior executive service.

(2) Each chief executive shall comply with all reasonable requests made by the Commission for persons employed in the Department to be made available for training purposes under this section, but the chief executive shall not be required to make any person in the Department available for more than 15 days of training under this section in any period of 12 months.

PART V

PERSONNEL PROVISIONS

56. General principles—(1) The chief executive of a Department shall operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this section, a “good employer” is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal employment opportunities programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Recognition of—
 - (i) The aims and aspirations of the Maori people; and
 - (ii) The employment requirements of the Maori people; and
 - (iii) The need for greater involvement of the Maori people in the Public Service; and
- (e) Opportunities for the enhancement of the abilities of individual employees; and
- (f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

(3) In addition to the requirements, specified in subsections (1) and (2) of this section, each chief executive shall ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest.

(4) For the purposes of this section, “employee” includes a member of the senior executive service.

57. Code of conduct—The Commission may from time to time issue a code of conduct covering the minimum standards of integrity and conduct that are to apply in the Public Service.

58. Equal employment opportunities—(1) The chief executive of a Department—

- (a) Shall in each year develop and publish an equal employment opportunities programme for the Department:

- (b) Shall ensure in each year that the equal opportunities programme for that year is complied with throughout the Department.
- (2) The chief executive of a Department shall include in the annual report of the Department—
 - (a) A summary of the equal employment opportunities programme for the year to which the report relates; and
 - (b) An account of the extent to which the Department was able to meet, during the year to which the report relates, the equal employment opportunities programme for that year.
- (3) For the purposes of this section and section 56 of this Act, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons.

59. Employees of Departments—(1) The chief executive of a Department—

- (a) May from time to time appoint such employees (including acting or temporary or casual employees) as the chief executive thinks necessary for the efficient exercise of the functions, duties, and powers of the Department; and
 - (b) May, subject to any conditions of employment included in any award or agreement, at any time remove any employee from that employee's office or employment.
- (2) Unless expressly provided to the contrary in this Act, the chief executive shall have all the rights, duties, and powers of an employer in respect of the persons employed in the Department for which the chief executive is responsible.

60. Appointments on merit—A chief executive, in making an appointment under this Act, shall give preference to the person who is best suited to the position.

61. Obligation to notify vacancies—Where a chief executive of a Department intends to fill a position that is vacant or is to become vacant in the Department, the chief executive shall, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

62. Acting appointments—(1) In the case of absence from duty of any employee (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in a Department (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the chief executive to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(2) No such direction and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee has not been appointed to any position to which the direction relates.

Cf. 1962, No. 132, s. 33

63. Evidence of appointments—(1) Any appointment to any office or position in a Department shall be made, confirmed, or approved in writing by an instrument or minute by the chief executive or by any person to whom the chief executive has delegated power in that behalf in accordance with section 41 of this Act; and, notwithstanding anything to the contrary in any Act, it shall not be necessary for the chief executive or any such person to execute any formal warrant or other instrument in special form.

(2) A certificate signed by the chief executive that any person named in the certificate was appointed to any office or position in the Department from and including a day stated therein shall be sufficient evidence that the person so named was duly so appointed to and continues to hold the office or position unless the contrary is proved.

Cf. 1962, No. 132, s. 34

64. Obligation to notify appointments—The chief executive of a Department shall notify to the employees within the Department every appointment (other than that of an acting, temporary, or casual employee) made by the chief executive to an office or position in the Department.

65. Review of appointments—(1) The chief executive of each Department shall put into place for the Department a

procedure for reviewing those appointments made within that Department that are the subject of any complaint by an employee of that Department.

(2) The procedure shall be approved by the Commission and shall comply with the guidelines prescribed by the Commission for such review procedures.

(3) Nothing in this section relates to an acting appointment or to an appointment to a position in the senior executive service.

66. Redundancy—(1) If the chief executive of a Department at any time finds that a greater number of persons is employed in the Department than is considered by the chief executive to be necessary for the efficient working of the Department, such persons as are redundant may be transferred by the Commission to any other Department that requires additional assistance.

(2) If the Commission cannot successfully transfer any person so found to be redundant, the Commission shall advise the chief executive, who may then terminate that person's employment.

(3) Before directing a transfer under subsection (1) of this section, the Commission—

(a) Shall consult with the employee about any proposed transfer; and

(b) Shall consult with the chief executive of the Department to which the employee is to be transferred.

(4) The decision of the Commission shall be binding on both the employee and the Departments affected.

Cf. 1962, No. 132, s. 36

PART VI

APPLICATION OF LABOUR RELATIONS ACT 1987

67. Application to Public Service of Labour Relations Act 1987—Except as otherwise provided in this Act, the Labour Relations Act 1987 shall apply in relation to the Public Service.

68. Negotiations of conditions of employment—(1) The Commission shall negotiate under Part VII of the Labour Relations Act 1987 the conditions of employment for all employees in the Public Service.

(2) The negotiations, which shall be conducted by the Commission with the union party, shall be conducted by the

Commission in consultation with the chief executive of each Department affected.

69. Conciliation and arbitration—Where—

- (a) Negotiations for an award cannot be initiated by reason of the provisions of section 134 (4) of the Labour Relations Act 1987; and
- (b) The parties do not agree to use the procedure for a voluntary settlement under section 164 of the Labour Relations Act 1987,—

the procedure prescribed in the Third Schedule to this Act shall be used to fix conditions of employment of employees of the Public Service.

70. Delegation of Commission's powers—(1) The Commission may from time to time delegate, in writing, to a chief executive of a Department any of the Commission's powers under section 68 of this Act or under any provision of the Third Schedule to this Act.

(2) Where the Commission, acting under subsection (1) of this section, delegates to a chief executive the function, under section 68 (1) of this Act, of conducting negotiations with the union party, the chief executive shall conduct those negotiations in consultation with the Commission.

(3) Nothing in this section limits the provisions of section 23 of this Act.

71. Compulsory arbitration and agreement not to strike or lock out—(1) This section applies to any award or agreement—

- (a) Negotiated under—
 - (i) Part VII of the Labour Relations Act 1987; or
 - (ii) Section 69 of this Act; and

(b) Applying only to employees in the Public Service.

(2) Any award or agreement to which this section applies may include a clause under which—

- (a) Both the union party and the Commission agree to accept compulsory arbitration; and
- (b) The union party agrees that such of its members as are bound by the award or agreement will not take part in any strike of a kind described in paragraph (a) or paragraph (b) or paragraph (c) of section 233 (1) of the Labour Relations Act 1987; and
- (c) The Commission agrees that it will not, by a lockout of a kind described in paragraph (a) or paragraph (b) or

paragraph (c) of section 233 (1) of the Labour Relations Act 1987, lock out such of its employees as are bound by the award or agreement.

(3) Where a clause is inserted in an award or agreement pursuant to this section, that clause shall also be inserted in the award or agreement that is subsequent to the award or agreement in which the clause was inserted.

(4) The provisions of the Fourth Schedule to this Act shall apply in relation to compulsory arbitration under the clause.

(5) Where a union that is a party to an award or agreement that covers employees of the Public Service delivers to the Commission, not later than the close of the 30th day of June 1988, a written request to insert in the award or agreement, a clause of the kind described in subsection (2) of this section,—

(a) The Commission shall agree to the request and shall inform the Arbitration Commission forthwith of the Commission's agreement; and

(b) An Arbitration Commissioner shall forthwith amend the award or agreement accordingly.

(6) Notwithstanding any other provision of this section, every clause that is inserted in any award or agreement as a result of a request made under subsection (5) of this section in relation to that award or agreement shall, unless cancelled under section 72 of this Act, be also inserted in—

(a) The award or agreement that is subsequent to the award or agreement in which the clause was inserted; and

(b) The award or agreement that is subsequent to the award or agreement specified in paragraph (a) of this subsection.

(7) Every clause that is inserted in any award or agreement as a result of a request made under subsection (5) of this section, whether in relation to that award or agreement or a superseded award or agreement, shall, unless removed at the request of the union or unless cancelled under section 72 of this Act, be included in any award or agreement made in substitution for the award or agreement in which the clause is included.

72. Contravention of agreement not to strike or lock out—(1) Where any party to an award or agreement alleges that a strike or lockout has taken place in contravention of a clause included in the award or agreement pursuant to section 71 of this Act, that party may apply to the Labour Court for a declaration that such a contravention has taken place.

(2) If the Labour Court is satisfied that such a contravention has taken place, it may declare the strike or lockout to be, by

reason of that contravention, an unlawful strike or an unlawful lockout.

(3) Where the declaration relates to a strike, the State Services Commission may request the Arbitration Commission to cancel the clause included in the award or agreement pursuant to section 71 of this Act, and an Arbitration Commissioner shall cancel that clause accordingly.

(4) Where the declaration relates to a lockout, the union party which negotiated the award or agreement may request the Arbitration Commission to cancel the clause included in the award or agreement pursuant to section 71 of this Act, and an Arbitration Commissioner shall cancel the clause accordingly.

(5) Any request made under subsection (3) or subsection (4) of this section shall—

(a) Include particulars of the relevant declaration of the Labour Court; and

(b) Be filed in the office of the Arbitration Commission.

(6) On the cancellation of the clause, any arbitration or other proceedings that are then in progress under that clause shall cease and shall not be renewed.

(7) Nothing in section 242 (3) or section 243 (3) of the Labour Relations Act 1987 applies in relation to a strike or lockout that takes place in contravention of a clause included in an award or agreement pursuant to section 71 of this Act.

PART VII

EDUCATION SERVICE

73. Application of Labour Relations Act 1987—Except as otherwise provided in this Act, the Labour Relations Act 1987 shall apply in relation to the Education service.

74. Negotiation of conditions of employment—(1) The State Services Commission shall negotiate under Part VII of the Labour Relations Act 1987 the conditions of employment for all employees of the Education service.

(2) The negotiations, which shall be conducted by the State Services Commission with the union party, shall be conducted in consultation with—

(a) The chief executive of the Department of Education; and

(b) Such organisations of employers of persons employed in the Education service which are representatives of the employers who will be bound by the proposed award or agreement.

75. Compulsory arbitration and agreement not to strike or lock out—(1) This section applies to any award or agreement—

- (a) Negotiated under Part VII of the Labour Relations Act 1987; and
 - (b) Applying only to employees of the Education service.
- (2) Any award or agreement to which this section applies may include a clause under which—
- (a) Both the union party and the State Services Commission agree to accept compulsory arbitration; and
 - (b) The union party agrees that such of its members as are bound by the award or agreement will not take part in any strike of a kind described in paragraph (a) or paragraph (b) or paragraph (c) of section 233 (1) of the Labour Relations Act 1987; and
 - (c) The State Services Commission agrees that it will not, by a lockout of a kind described in paragraph (a) or paragraph (b) or paragraph (c) of section 233 (1) of the Labour Relations Act 1987, lock out such of its employees as are bound by the award or agreement.
- (3) Where a clause is inserted in an award or agreement pursuant to this section, that clause shall also be inserted in the award or agreement that is subsequent to the award or agreement in which the clause was inserted.
- (4) The provisions of the Fourth Schedule to this Act shall apply in relation to compulsory arbitration under the clause.
- (5) Where a union that is a party to an award or agreement that covers employees of the Education service delivers to the State Services Commission, not later than the close of the 30th day of June 1988, a written request to include in the award or agreement a clause of the kind described in subsection (2) of this section,—
- (a) The State Services Commission shall agree to the request and shall inform the Arbitration Commission forthwith of the State Services Commission's agreement; and
 - (b) An Arbitration Commissioner shall forthwith amend the award or agreement accordingly.
- (6) Notwithstanding any other provision of this section, every clause that is inserted in any award or agreement as a result of a request made under subsection (5) of this section in relation to that award or agreement shall, unless cancelled under section 76 of this Act, be also inserted in—
- (a) The award or agreement that is subsequent to the award or agreement in which the clause was inserted; and

(b) The award or agreement that is subsequent to the award or agreement specified in paragraph (a) of this subsection.

(7) Every clause that is included in any award or agreement as a result of a request made under subsection (5) of this section, whether in relation to that award or agreement or a superseded award or agreement, shall, unless removed at the request of the union or unless cancelled under section 76 of this Act, be included in any award or agreement made in substitution for the award or agreement in which the clause is included.

76. Contravention of agreement not to strike or lock out—(1) Where any party to an award or agreement alleges that a strike or lockout has taken place in contravention of a clause included in the award or agreement pursuant to section 75 of this Act, that party may apply to the Labour Court for a declaration that such a contravention has taken place.

(2) If the Labour Court is satisfied that such a contravention has taken place, it may declare the strike or lockout to be, by reason of that contravention, an unlawful strike or an unlawful lockout.

(3) Where the declaration relates to a strike, the State Services Commission may request the Arbitration Commission to cancel the clause included in the award or agreement pursuant to section 75 of this Act, and an Arbitration Commissioner shall cancel that clause accordingly.

(4) Where the declaration relates to a lockout, the union party which negotiated the award or agreement may request the Arbitration Commission to cancel the clause included in the award or agreement pursuant to section 75 of this Act, and an Arbitration Commissioner shall cancel the clause accordingly.

(5) Any request made under subsection (3) or subsection (4) of this section shall—

(a) Include particulars of the relevant declaration of the Labour Court; and

(b) Be filed in the office of the Arbitration Commission.

(6) On the cancellation of the clause, any arbitration or other proceedings that are then in progress under that clause shall cease and shall not be renewed.

(7) Nothing in section 242 (3) or section 243 (3) of the Labour Relations Act 1987 applies in relation to a strike or lockout that takes place in contravention of a clause included in an award or agreement pursuant to section 75 of this Act.

77. Actual conditions of employment—The Commission may declare that all or any part of the conditions of employment fixed by award or agreement registered under Part VII of the Labour Relations Act 1987 for persons employed in the Education service are to be the actual conditions of employment.

78. Choice of procedure—Where the circumstances giving rise to a personal grievance by a person employed in the Education service are also such that that person would be entitled to make a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971 or to exercise a right of review or appeal, that person may take one but not more than one of the following steps:

- (a) The person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the Labour Relations Act 1987 or the relevant award or agreement;
- (b) The person may make, in relation to those circumstances, a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971;
- (c) The person may exercise the right of review or appeal.

79. General principles—(1) Every employer in the Education service shall operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this section a “good employer” is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal employment opportunities programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Recognition of—
 - (i) The aims and aspirations of the Maori people; and
 - (ii) The employment requirements of the Maori people; and
 - (iii) The need for greater involvement of the Maori people in the Education service; and
- (e) Opportunities for the enhancement of the abilities of individual employees; and

- (f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

(3) In addition to the requirements specified in subsections (1) and (2) of this section, each employer shall ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest.

80. Equal employment opportunities—(1) The Director-General of Education shall have the function of promoting, developing, and monitoring equal employment opportunities policies and programmes in the Education service.

(2) Every employer in the Education service—

(a) Shall in each year develop and publish an equal employment opportunities programme:

(b) Shall ensure in each year that the equal opportunities programme for that year is complied with.

(3) Every employer shall report annually to the Director-General of Education providing—

(a) A summary of the equal employment opportunities programme for the year to which the report relates; and

(b) An account of the extent to which the employer was able to meet, during the year to which the report relates, the equal employment opportunities programme for that year.

(4) The Director-General shall incorporate a summary of the reports received under subsection (3) of this section in the annual report of the department.

(5) For the purposes of this section and section 79 of this Act, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons.

81. Amendments to Education Act 1964—(1) Section 2 (1) of the Education Act 1964 is hereby amended by repealing the definition of the term “salary order”, and substituting the following definition:

“‘Salary order’ means any decision fixing any salary or salaries in the Education service:”.

(2) Section 2 (1) of the Education Act 1964 is hereby further amended by repealing the definition of the term “teacher appointed by the Director-General”, and substituting the following definition:

“‘Teacher appointed by the Director-General’ means a teacher placed under the control of the Director-General by an Order in Council made under section 164 of this Act.”

(3) Section 106B of the Education Act 1964 (as inserted by section 7 of the Education Amendment Act 1975) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) In making any regulations under subsection (1) (g) of this section, regard shall be had to the provisions of Part VI of the State Sector Act 1988.”

(4) Section 163 (3) and section 164E (as inserted by section 18 of the Education Amendment Act 1968) of the Education Act 1964 are hereby repealed.

PART VIII

MISCELLANEOUS PROVISIONS

82. Medical examinations—A chief executive may require any applicant for appointment to that Department, or any employee of the Department, to undergo a medical examination, at the expense of the Department, by a registered medical practitioner nominated by the chief executive.

Cf. 1962, No. 132, s. 67

83. Instructions—Subject to this Act and without restricting the powers of a chief executive, a chief executive may from time to time issue instructions that shall be observed by all employees of the Department.

Cf. 1962, No. 132, s. 73

84. Contribution to superannuation funds in respect of employees in State services—Notwithstanding anything in the Government Superannuation Fund Act 1956, the Minister of Finance may in respect of any person employed in any part of the State services contribute out of money appropriated by Parliament for the purpose to any superannuation fund approved pursuant to the Superannuation Schemes Act 1976.

85. Offence to attempt to influence Commission or chief executive—(1) Every person commits an offence against this section who directly or indirectly solicits or endeavours to influence the Commission or any Commissioner or any chief executive or any other person or persons to whom the Commission or the chief executive has delegated powers under section 23 or section 41 of this Act with respect to decisions on the matters described in section 5 or section 33 of this Act.

(2) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$2,000.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Commission or to the chief executive or to any other person or persons acting under delegation from the Commission or the chief executive in respect of any matter at the request or invitation of the Commission or the chief executive or to any other person or persons acting under delegation.

(4) Nothing in this section shall be construed so as to prevent any organisation, being an organisation representing employees or any class or classes thereof, from making representations to the Commission or to the chief executive or to any other person or persons acting under delegation from the Commission or the chief executive on any matter affecting the salaries, wages, or conditions of employment of any employee or class of employees.

(5) Nothing in this section shall be construed so as to prevent the Commission from making representations to the chief executive, or the chief executive making representations to the Commission, (or to any person or persons acting under delegation in either case) on any matter whatever, whether relating to a decision on an individual employee or otherwise.

Cf. 1962, No. 132, s. 76; 1964, No. 57, s. 7; 1978, No. 37, s. 9

86. Protection from liability—No chief executive, or member of the senior executive service or other employee, shall be personally liable for any liability of the Department, or for any act done or omitted by the Department or by the chief executive or any member of the senior executive service or any other employee of the Department or of the chief executive in good faith in pursuance or intended pursuance of the functions or powers of the Department or of the chief executive.

87. Amendments to other enactments—The enactments specified in the Fifth Schedule to this Act are hereby amended in the manner indicated in that Schedule.

88. Repeals and transitional provision—(1) The enactments specified in the Sixth Schedule to this Act are hereby repealed.

(2) Every reference in any other enactment to the State Services Act 1962 or the State Services Conditions of Employment Act 1977 shall hereafter be read as a reference to the State Sector Act 1988.

89. Revocations—The regulations and orders specified in the Seventh Schedule to this Act are hereby revoked.

90. Consequential amendments in relation to repeal of State Services Act 1962 and State Services Conditions of Employment Act 1977—Unless in any case the context otherwise requires, and subject to the provisions of this Act, in any other enactment or in any regulations or in any instrument—

- (a) Every reference to the State Services Act 1962 or to the State Services Conditions of Employment Act 1977 shall be read as a reference to the State Sector Act 1988:
- (b) Every reference to an officer, probationer, wage-worker, or temporary employee under the State Services Act 1962 shall be read as a reference to an employee under the State Sector Act 1988:
- (c) Every reference to the Chairman of the State Services Commission shall be read as a reference to the Chief Commissioner under this Act:
- (d) Every reference to a permanent head shall be read as a reference to a chief executive:
- (e) Every reference to a matter being determined under the State Services Conditions of Employment Act 1977 shall be read as a reference to a matter being determined under the State Sector Act 1988.

Transitional Provisions and Savings

91. Transitional provisions for permanent heads—(1) Except as provided in subsection (2) of this section, any person holding the position of a permanent head of a Department of the Public Service under the State Services Act 1962 (not being an acting appointment) at the commencement of this Act shall be offered employment as the chief executive of that Department for a period of not less than 2 years from the date of the commencement of this Act on terms and conditions of employment (other than tenure of office) no less

favourable than the terms and conditions of employment applying immediately before the commencement of this Act in the position as a permanent head of a Department.

(2) No person shall be entitled to be, but may be, appointed as a chief executive under subsection (1) of this section for any period that would take that person's employment beyond their compulsory date of retirement as determined under the State Services Act 1962 immediately before the commencement of this Act.

(3) Subsections (1) and (2) of this section shall apply in relation to—

(a) The person holding office immediately before the commencement of this Act (other than in an acting capacity) as Director of the Prime Minister's Office; and

(b) The person holding office immediately before the commencement of this Act (other than in an acting capacity) as the Secretary of the Cabinet,—

as if they were each a permanent head of a Department of the Public Service under the State Services Act 1962.

(4) Nothing in section 35 of this Act shall apply to an appointment made under subsection (1) of this section.

92. Transitional provisions for senior executive service—(1) Any person who, at the commencement of this Act, holds any position in the Public Service designated by the Commission as a position in the senior executive service at any time before the close of the 30th day of June 1988, shall be offered employment in that position in the senior executive service for a period of not less than 2 years from the date of the commencement of this Act on terms and conditions of employment (other than tenure of office) no less favourable than the terms and conditions of employment applying to that person immediately before the commencement of this Act in that person's position under the State Services Act 1962.

(2) No person shall be entitled to be, but may be, appointed to any position under this section for any period that would take that person's employment beyond his or her compulsory retirement date as determined under the State Services Act 1962 immediately before the commencement of this Act.

(3) Nothing in section 51 of this Act shall apply to an appointment made under this section.

93. Transitional provisions in respect of appointments to Public Service—Every person who, at the commencement

of this Act, holds any position in the Public Service shall continue to hold that position as if that person had been appointed under this Act.

94. Identical conditions of employment in respect of State services—(1) The terms and conditions of employment of every person who, at the commencement of this Act, holds any position in the State services shall, on the 1st day of April 1988 (and thereafter until varied) be identical with the terms and conditions of that person's employment in the State services immediately before the 1st day of April 1988.

(2) Notwithstanding anything in subsection (1) of this section, no provision of any repealed Act that is inconsistent with any express provision of this Act shall, by virtue of that subsection, continue to have effect.

95. Awards and agreements—Every award and every agreement relating to the terms and conditions of employment of employees in the State services which was in force immediately before the commencement of this Act shall continue in force after the commencement of the 1st day of April 1988 notwithstanding any of the other provisions of this Act. Any such award or agreement shall have effect according to its tenor.

96. Determinations and orders—(1) Every determination and every order of the Arbitration Commission or the Labour Court, being a determination or order relating to terms and conditions of employment of employees of the State services, which was made under the State Services Act 1962 or the State Services Conditions of Employment Act 1977 and which was in force immediately before the commencement of this Act,—

- (a) Shall continue in force, except so far as other provision is duly made under this Act fixing the terms and conditions of employment to which that determination or order relates; and
- (b) Shall be deemed to be an award or an agreement registered under Part VII of the Labour Relations Act 1987; but
- (c) The rates of remuneration included in a determination or order deemed by this subsection to be an award or an agreement registered under Part VII of the Labour Relations Act 1987 shall be paid rates.

(2) An award or an agreement fixing the terms and conditions of employment of the employees of any Department

may be delivered to the Arbitration Commission for registration under Part VII of the Labour Relations Act 1987 at any time before the close of the 30th day of June 1988.

(3) Except as provided in subsection (6) of this section, where an award or agreement fixing the terms and conditions of employment of employees of the State services has not been delivered to the Arbitration Commission for registration before the close of the 30th day of June 1988, no award or agreement fixing conditions of employment of those employees may be registered until after the expiry date of the determination or order deemed to be an award or agreement under subsection (1) of this section.

(4) Where any dispute arises between the parties over any matters to be incorporated into the award or agreement that will supersede a determination that is deemed by this section to be an award or agreement, either party may, before the close of the 30th day of June 1988, invoke the disputes procedure set out in the Sixth Schedule to the Labour Relations Act 1987.

(5) In making a decision on the dispute, the disputes committee or the Labour Court shall determine—

- (a) Whether the matter or matters in dispute are identical terms or conditions of employment to which section 94 of this Act applies; and
- (b) If so, whether they should be incorporated in the proposed award or agreement.

(6) Where, as at the close of the 30th day of June 1988, the only matters not settled in relation to the completion of an award or agreement are matters that have been referred to a disputes committee under subsection (4) of this section, that award or agreement may, notwithstanding any of the other provisions of this section, be delivered to the Arbitration Commission for registration forthwith upon the decision of the disputes committee or the Labour Court being advised to the parties.

(7) Except as provided in subsection (8) of this section, every award or agreement registered by the Arbitration Commission under this section shall come into force on the 1st day of July 1988.

(8) The Commission may make an adjustment, with effect from the commencement of the 1st day of April 1988, to the salaries of any person or group of persons who, at the commencement of this Act,—

- (a) Held positions to which section 12 (1)(a) of the Higher Salaries Commission Act 1977 applied; or

(b) Belonged to a group or class of employees whose salary scale had been the subject of an adjustment that took effect on the 10th day of November 1987 but who have not received an adjustment of at least 7 percent to their salaries as a result of that adjustment.

(9) Any such adjustment made by the Commission under subsection (8) of this section shall be incorporated into the award or agreement that is to come into force on the 1st day of July 1988.

(10) Except where there is only one employer involved, every document registered under this section shall be an award.

97. Clauses relating to disputes of rights and personal grievances—Every determination or order deemed to be registered under Part VII of the Labour Relations Act 1987 by section 96 of this Act shall be deemed to include—

(a) With effect from the commencement of the 1st day of April 1988, the clauses set out in the Sixth Schedule to that Act (which clauses relate to disputes of rights); and

(b) With effect from the commencement of the 1st day of July 1988, the clauses set out in the Seventh Schedule to that Act (which clauses relate to settlement of personal grievances).

98. Expiry date of determinations and orders—Every determination or order—

(a) Deemed to be registered under Part VII of the Labour Relations Act 1987 by section 96 (1) of this Act; or

(b) Delivered for registration under section 96 (2) or (6) of this Act,—

shall be deemed to include an expiry date which shall be the first date upon which any of the conditions of employment contained in that determination or order could have been amended under section 6 of the State Services Conditions of Employment Act 1977 other than by way of amending determination under section 24 of the State Services Conditions of Employment Act 1977.

99. Mandatory registration—(1) Any award or agreement delivered to the Arbitration Commission for registration under section 96 of this Act, shall, subject to subsection (2) of this section, be registered by the Arbitration Commission notwithstanding that the award or agreement does not comply with the requirements of section 150 or section 164 of the Labour Relations Act 1987.

(2) Notwithstanding subsection (1) of this section, an award or agreement to which that subsection applies may not be registered if any matter contained in it is contrary to any enactment.

100. Recognition of service organisations as unions—Every organisation recognised immediately before the commencement of this Act as a service organisation under the State Services Conditions of Employment Act 1977 shall be deemed to be registered under the Labour Relations Act 1987 as a union of workers with the coverage recognised under the State Services Conditions of Employment Act 1977 on the 31st day of March 1988, notwithstanding that it may have fewer than 1,000 financial members, and section 30 of the Labour Relations Act 1987 shall apply to each such organisation accordingly.

101. Union rules—(1) Every union that is deemed to be registered under the Labour Relations Act 1987 by section 100 of this Act shall, within the period of 12 months beginning on the 1st day of April 1988, amend its rules so as to ensure that they comply with the requirements as to rules of unions contained in that Act, and any amendment made to the rules after the date of commencement of this Act shall so comply.

(2) If, at the end of the period of 12 months specified in subsection (1) of this section, the Registrar of Unions is satisfied that any rule or rules of any union or employers organisation do not comply with the requirements of the Labour Relations Act 1987, the Registrar may amend the rule or rules so as to ensure that it or they comply with those requirements, but any union or organisation affected by such an amendment may appeal to the Labour Court against the Registrar's decision to amend or against any part of that decision.

(3) Nothing in this section affects the immediate application, as from the commencement of this Act, of those sections of the Labour Relations Act 1987 which deem certain rules to be included in the rules of unions.

(4) The Registrar of Unions shall not exercise the power conferred by section 40 (2) of the Labour Relations Act 1987 in respect of any union rules that are in force at the date of commencement of this Act until the expiration of the period of 12 months specified in subsection (1) of this section.

102. Deferring operation of sections of the Labour Relations Act 1987—Sections 49 and 52 of the Labour

Relations Act 1987 shall not, until the 1st day of April 1989, apply in respect of any organisation that has been deemed to be a union by section 100 of this Act.

103. Union membership—(1) Where, at the commencement of this Act, any determination contains a membership clause, that clause shall continue to have effect according to its tenor notwithstanding—

- (a) The repeal of the provisions under which it was made; and
- (b) The provisions of the Labour Relations Act 1987 relating to the insertion of union membership clauses in awards or agreements.

(2) The provisions of the Labour Relations Act 1987 relating to union membership clauses shall apply in respect of the insertion of any union membership clause in any award or agreement after the commencement of this Act, including the replacement of any membership clause to which subsection (1) of this section applies.

(3) Every service organisation that is deemed to be a union by section 100 of this Act shall, for a period of 12 months beginning on the 1st day of April 1988, have exclusive and unchangeable coverage of the persons in respect of whom it was recognised under the State Services Conditions of Employment Act 1977 immediately before the commencement of this Act.

104. Causes of action—All matters and proceedings commenced under or in accordance with the State Services Conditions of Employment Act 1977 and pending or in progress at the commencement of this Act may be continued and completed as if this Act had not been passed.

105. Rights of employees of Public Service—Notwithstanding the repeal of the State Services Act 1962, the provisions of sections 45 to 47, 55 to 59, and 70A and of Part IV (other than the provisions of section 64 (1) (a)) of that Act shall, until the close of the 30th day of June 1988, continue to apply to employees in the Public Service as if this Act had not been passed.

106. Application of repealed provisions—(1) The following provisions of the State Services Act 1962, namely, the provisions of—

- (a) Sections 22 to 26; and
- (b) Sections 28 to 31; and

- (c) Sections 32 to 39; and
- (d) Sections 44 to 49; and
- (e) Sections 51 to 60; and
- (f) Parts IV and V—

shall continue to apply for the purposes of this Act only to the extent that they are expressly referred to and expressly applied by this Act or any other Act.

(2) Where, before the commencement of this Act, any person was required by or under any Act or instructions, in force at the commencement of this Act, to retire from any office or employment on attaining a specified age, nothing in this Act entitles that person to continue in that office or employment after attaining that age.

107. Grading reviews of employees of Public Service—

(1) Notwithstanding anything in this Act, if, immediately before the 1st day of July 1988, any person has lodged an application under section 45 of the State Services Act 1962 for a review of the grading of the position that that person occupied, the provisions of that Act, so far as they are applicable to such an application and any rights of review or rights of appeal flowing therefrom, shall continue to apply to that application and to any such rights of review and appeal as if the State Services Act 1962 had not been repealed by this Act.

(2) The decision on any application for review shall be implemented by the chief executive of the Department affected in the same manner as if the State Services Act 1962 were still in force and as if that chief executive were the Commission.

108. Appeal rights of employees of Public Service—

(1) Notwithstanding anything in this Act if, immediately before the 1st day of July 1988, an appeal under section 57 or section 64 of the State Services Act 1962 is pending or if there is a right to such an appeal, either to the State Services Commission or to the Public Service Appeal Board, the provisions of that Act, so far as they are applicable, shall continue to apply to that appeal as if the State Services Act 1962 had not been repealed.

(2) Notwithstanding anything in this Act, if, immediately before the 1st day of April 1988,—

(a) An appeal under section 64 (1) (a) of the State Services Act 1962 is pending; or

(b) There is a right to such an appeal,—
the provisions of that Act, so far as they are applicable, shall continue to apply to that appeal as if the State Services Act 1962 had not been repealed.

(3) The decision on any appeal to which subsection (1) or subsection (2) of this section applies shall be binding on the employee, the Commission, and on any chief executive who may be affected and shall be implemented as if the State Services Act 1962 were still in force.

109. Apprenticeships preserved—(1) Every indenture of apprenticeship entered into under the State Services Act 1962 before the date of the commencement of this Act and still subsisting immediately before that date shall continue in force on the same terms and conditions (but subject to any necessary modifications) as if the State Services Act 1962 had not been repealed.

(2) In any such case, as from the commencement of this Act, the chief executive shall be the employer or the master for the purposes of the indenture of apprenticeship, and every reference in the indenture of apprenticeship to the Commission shall be read as a reference to the chief executive.

(3) The repeal of section 14 of the State Services Conditions of Employment Amendment Act 1987 shall not affect any indenture of apprenticeship continued in force by that section.

110. Provisions relating to Commission—(1) Every reference in any enactment or document to the Public Service Commissioner or to the Public Service Commission or to the office of either of them shall, after the commencement of this Act, unless the context otherwise requires, be read as references to the State Services Commission under this Act or the Office of the State Services Commission, as the case may be.

(2) Every reference to the State Services Commission in any enactment passed or document made before or after the passing of this Act shall, unless the context otherwise requires, be read as a reference to the State Services Commission continued by this Act.

(3) Every person who, immediately before the commencement of this Act, held office as a member of the Commission shall be deemed to have been appointed under section 12 of this Act.

(4) The person who, immediately before the commencement of this Act, held office as the Chairman of the Commission shall be deemed to have been appointed as Chief Commissioner under section 12 (2) of this Act.

111. General liabilities of Commission—(1) All references to the Commission in any manual, or document whatever (not being an enactment) that is subsisting immediately before the commencement of this Act, shall, unless the Commission declares otherwise, be read as a reference to the appropriate department or chief executive, as the case may require.

(2) All contracts, engagements, and liabilities and all rights and authorities of any nature whatever that, immediately before the commencement of this Act, existed between an individual in the Public Service and the Commission shall, unless the context otherwise requires, continue to exist as if the chief executive of the Department in which the individual is employed were the Commission.

112. Savings—Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the State Services Conditions of Employment Amendment Act 1987 does not affect the amendments made by sections 16 (1), 16 (4), 18, 20 (1), and 23 of that Act or the rights conferred by sections 19, 21, and 22 of that Act.

SCHEDULES

Sections 2 (1), 27

FIRST SCHEDULE

DEPARTMENTS OF THE PUBLIC SERVICE

Ministry of Agriculture and Fisheries.
Audit Department.
Cabinet Office.
Department of Conservation.
Crown Law Office.
Customs Department.
Ministry of Defence (excluding the Armed Forces raised and maintained under section 4 of the Defence Act 1971).
Department of Education.
Ministry of Energy.
Ministry for the Environment.
Ministry of Foreign Affairs.
Ministry of Forestry.
Government Printing Office.
Department of Health.
Housing Corporation of New Zealand.
Inland Revenue Department.
Department of Internal Affairs.
Department of Justice.
Department of Labour.
Department of Lands.
Department of Maori Affairs.
Police Department (civilian staff).
Prime Minister's Office.
Public Trust Office.
Rural Banking and Finance Corporation of New Zealand.
Department of Scientific and Industrial Research.
Department of Social Welfare.
State Insurance Office.
Office of the State Services Commission.
Department of Statistics.
Department of Survey and Land Information.
Tourist and Publicity Department.
Department of Trade and Industry.
Ministry of Transport.
The Treasury.
Valuation Department.
Ministry of Women's Affairs.

SECOND SCHEDULE
STATE ENTERPRISES

Section 2 (1)

Airways Corporation of New Zealand Limited.
 Coal Corporation of New Zealand Limited.
 Electricity Corporation of New Zealand Limited.
 Government Computing Service Limited.
 Government Life Insurance Corporation.
 Government Property Services Limited.
 Land Corporation Limited.
 New Zealand Forestry Corporation Limited.
 New Zealand Post Limited.
 New Zealand Railways Corporation.
 Post Office Bank Limited.
 Telecom Corporation of New Zealand Limited.
 Works and Development Services Corporation (NZ) Limited.

THIRD SCHEDULE

Section 69

PROCEDURE FOR CONCILIATION AND ARBITRATION

1. Initiation of negotiations for agreements—(1) Subject to this Act, a union party or the State Services Commission, as employer party, may at any time initiate negotiations for the making or renewal of an agreement fixing conditions of employment of employees of the Public Service by submitting a notice to the Chief Mediator.

(2) The submission of a notice to the Chief Mediator under subclause (1) of this clause creates a dispute of interest between the union party and the employer party.

2. Contents of notice—Every notice submitted under clause 1 of this Schedule shall—

- (a) Cite the proposed coverage clause of the agreement;
- (b) In the case of a notice submitted by the State Services Commission, cite the name of the union party;
- (c) In the case of a notice submitted by the union party, cite the State Services Commission as the employer party;
- (d) Indicate any claims that the initiating party wishes to make against the other party.

3. Power to withdraw notice—The initiating party may, at any time before a settlement of the dispute of interest has been reached, withdraw a notice submitted under clause 1 of this Schedule by giving written notice to that effect to the Chief Mediator.

4. Services of copies of notice—Immediately after the submission of a notice under clause 1 or clause 3 of this Schedule, the party that submitted the notice shall—

- (a) Give a copy of the notice to the Arbitration Commission; and
- (b) Serve a copy on the named parties cited in the notice pursuant to clause 2 (b) or clause 2 (c) of this Schedule.

5. Duty of Chief Mediator—The Chief Mediator shall, on receiving a notice submitted under clause 1 of this Schedule, designate a mediator to

THIRD SCHEDULE—*continued*PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*

facilitate negotiations in relation to the dispute of interest created by the submission of the notice.

6. Mediator to determine date for negotiations—(1) A mediator shall, as soon as practicable after being designated by the Chief Mediator, determine, in consultation with the representatives of the parties, a date, time, and place for negotiations in relation to the dispute.

(2) The mediator shall—

- (a) Notify the union party and the State Services Commission of the date, time, and place determined for the negotiations; and
- (b) Notify the union party and the State Services Commission that they may each nominate up to 10 persons as negotiators on behalf of the parties to the dispute.

7. Action where mediator cannot constitute conciliation council—(1) Where the mediator is unable to constitute a conciliation council, the mediator shall inform the Arbitration Commission accordingly.

(2) The Arbitration Commission shall then attempt to facilitate or arrange the constitution of a conciliation council and may, for that purpose,—

- (a) Give such directions incidental thereto as it thinks fit;
- (b) Call on the services of the Chief Mediator or any other person.
- (3) Subject to subclause (4) of this clause, where the Arbitration Commission's actions do not result in the constitution of a conciliation council, the Arbitration Commission shall, subject to clause 21 of this Schedule, proceed to hear and determine the dispute by settling the terms of the agreement and registering it.

(4) Where the Arbitration Commission is satisfied that the inability of the mediator or other person to constitute a conciliation council was caused by the party which initiated the negotiations for an agreement under clause 1 of this Schedule, the Arbitration Commission—

- (a) Shall not proceed to hear and determine the dispute under subclause (3) of this clause; and
- (b) Shall regard the notice submitted under clause 1 of this Schedule as being withdrawn and shall notify the parties to the negotiations accordingly.

(5) Where the parties to negotiations are notified under subclause (4) (b) of this clause, those negotiations shall lapse.

8. Conciliation council—(1) When the mediator is satisfied—

- (a) That the persons nominated as negotiators have authority on behalf of the parties to negotiate a settlement of the dispute; and
- (b) That the parties have lawful authority to negotiate the proposed coverage clause,—

the mediator shall by writing declare a conciliation council, consisting of the mediator and those negotiators, to be constituted in relation to the dispute.

(2) The conciliation council so constituted shall, except where otherwise provided, be deemed to be so constituted until—

- (a) An agreement is registered by the Arbitration Commission; or

THIRD SCHEDULE—*continued*PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*

- (b) The notice submitted under clause 1 of this Schedule is withdrawn; or
 - (c) The Arbitration Commission has notified the parties under clause 18 of this Schedule that the negotiations have lapsed.
- (3) No barrister or solicitor who holds a practising certificate for the time being in force under the Law Practitioners Act 1982, whether that barrister or solicitor is acting under a power of attorney or otherwise, shall be allowed to act as negotiator on a conciliation council unless the parties agree.
- (4) Nothing in subclause (3) of this clause prevents a person acting as a negotiator on a conciliation council where that person is acting substantially as an employer or employee rather than as a barrister or solicitor.

9. Application of provisions of Labour Relations Act 1987—The provisions of the following sections of the Labour Relations Act 1987 shall apply in relation to every conciliation council constituted under the Schedule, namely:

- (a) Section 142 (substitute negotiators);
- (b) Section 144 (powers and functions of mediator in relation to conciliation council);
- (c) Section 145 (powers and functions of conciliation council with respect to dispute).

10. Conciliated settlement—(1) If a settlement of a dispute of interest is arrived at in a conciliation council, the mediator shall record in writing the terms of settlement, which shall be signed and dated by—

- (a) The mediator; and
 - (b) An authorised representative of the union party; and
 - (c) An authorised representative of the State Services Commission as the employer party.
- (2) The terms of settlement shall be given by the mediator to—
- (a) The representatives of the parties; and
 - (b) The Chief Mediator; and
 - (c) The Arbitration Commission.

(3) When the Arbitration Commission has received the terms of settlement, an Arbitration Commissioner shall, subject to clause 21 of this Schedule,—

- (a) Register the terms of settlement as an agreement; and
- (b) Forward a copy of the agreement to—
 - (i) The representatives of the parties; and
 - (ii) The Secretary of Labour; and
 - (iii) The Chief Mediator.

11. Unsettled disputes—If the dispute of interest to which this Schedule applies is not settled by a conciliation council, the mediator shall refer the dispute to the Arbitration Commission.

12. Statements as to state of negotiations—(1) The union and the State Services Commission shall each provide the Arbitration Commission with a signed statement as to—

- (a) The state of the negotiations; and
- (b) The issues in dispute.

THIRD SCHEDULE—*continued*PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*

(2) The statement shall indicate, among other things, whether or not a partial settlement has been reached.

13. Copies of statement—A copy of the statement shall be forwarded to the other party at the same time as it is provided to the Arbitration Commission.

14. Power of Arbitration Commission to determine dispute where parties agree—If the parties agree in writing, the Arbitration Commission, after giving the parties an opportunity to be heard, shall, subject to the provisions of this Schedule, hear and determine the dispute by settling the terms of the agreement and registering it.

15. Duty of Arbitration Commission where power to determine dispute not conferred on it—If the parties do not agree to the dispute being heard and determined by the Arbitration Commission, an Arbitration Commissioner shall forthwith call the parties to a meeting for the purpose of determining the most appropriate method of resolving the dispute.

16. Hearing by Arbitration Commissioner—At any such meeting the Arbitration Commissioner shall hear the parties and may do all or any of the following:

- (a) Refer the dispute to the Chief Mediator to arrange (by delegation if necessary) for informal negotiations between the parties to try and resolve the dispute:
- (b) Consult such organisations as may be appropriate with a view to ascertaining whether they could assist in resolving the dispute:
- (c) With the written consent of the parties, refer it to the Arbitration Commission to hear and determine the dispute:
- (d) Take such other action as the Arbitration Commissioner considers in all the circumstances might assist to resolve the dispute.

17. Other actions of Arbitration Commissioner—Any action or actions taken by an Arbitration Commissioner under clause 16 of this Schedule shall not preclude the Arbitration Commissioner from taking any further action under that clause.

18. Lapse of negotiations—(1) Where, in respect of any dispute,—

- (a) An Arbitration Commissioner has exercised any or all of the powers conferred by clause 16 of this Schedule; and
- (b) That Arbitration Commissioner is satisfied that no action short of hearing and determining the dispute will settle it; and
- (c) The parties do not agree to the dispute being heard and determined by the Arbitration Commission,—

the negotiations shall lapse unless, under section 71 of this Act, a clause providing for compulsory arbitration applies.

(2) Where the negotiations lapse under subclause (1) of this clause, an Arbitration Commissioner shall notify the parties accordingly.

19. Criteria to be observed by Arbitration Commission—The Arbitration Commission, in hearing and determining a dispute in relation to a proposed agreement, shall have regard to—

THIRD SCHEDULE—*continued*PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*

- (a) The supply and demand factors for the skills of the employees covered by the proposed agreement; and
- (b) The need for fairness and equity in the rate of pay and conditions of employment for the work covered by the proposed agreement; and
- (c) Any changes in the content of any job or in the skills, duties, or responsibilities of positions covered by the proposed agreement; and
- (d) Any changes in productivity arising from, for example, the introduction of new technology; and
- (e) Relativities within the proposed agreement, and between it and other awards and agreements.

20. Application of criteria—In applying the criteria, the Arbitration Commission—

- (a) Shall not be bound by historical precedent and practice of any sort; and
- (b) Shall consider whether relativities or conditions of employment should be changed to take account of factors that are specific to the work covered by the proposed agreement.

21. Power of Commission to refuse to register agreement—

(1) When a dispute of interest has been referred to the Commission under clause 14 or clause 16 (c) of this Schedule or terms of settlement are received by the Commission under clause 10 (2) of this Schedule, the Commission shall refuse to register an agreement if it is satisfied that—

- (a) The parties or any of them do not have the right to represent the employers or employees or some of the employers or employees whom the agreement would purport to cover if the agreement were made or the terms of settlement were registered as an agreement;
- (b) Any matter contained in the proposed agreement is contrary to any enactment;
- (c) The proposed agreement's coverage clause overlaps that of an existing award or agreement or is likely to overlap with that of a proposed agreement with an employer who has been specified for separate negotiations under section 134 (3) (d) or section 135 of the Labour Relations Act 1987.

(2) Where the Commission, acting under subclause (1) of this clause, refuses to register an agreement, it shall—

- (a) Inform the parties of the reasons for its refusal; and
- (b) Give the parties an opportunity to overcome the barrier to registration of the agreement.

(3) For the purposes of subclause (2) (b) of this clause, an Arbitration Commissioner may exercise any of the powers conferred on an Arbitration Commissioner by clause 16 of this Schedule and, where a Commissioner does so, clauses 17 and 18 of this Schedule shall apply accordingly with all necessary modifications.

(4) Where the Arbitration Commission is satisfied, in relation to any dispute of interest that any barrier to the registration of an agreement has been overcome, an Arbitration Commissioner shall register an agreement

THIRD SCHEDULE—*continued*PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*

notwithstanding that on one or more previous occasions the Commission refused, in relation to that dispute of interest, to register an agreement.

22. Power of Arbitration Commissioner to waive technical irregularities—An Arbitration Commissioner in his or her discretion may waive any technical irregularity or omission that may have occurred in the submission or reference of a dispute of interest to the Arbitration Commission, if he or she is satisfied that the provisions of this Act have been substantially complied with.

Section 71 (4)

FOURTH SCHEDULE

FINAL OFFER ARBITRATION

1. Application of section 147 of Labour Relations Act 1987 in relation to negotiation of agreements—Where—

- (a) A clause providing for compulsory arbitration is included in an agreement; and
- (b) A dispute of interest to procure an agreement in substitution for that agreement is created under section 164 (2) of the Labour Relations Act 1987; and
- (c) There are issues on which the parties to the dispute of interest fail to agree,—

section 147 of the Labour Relations Act 1987 shall apply in relation to the dispute of interest as if it were a dispute of interest that had not been settled by a conciliation council.

2. Application of procedure—Where a clause providing for compulsory arbitration is, under section 71 of this Act, included in an award or agreement (including an agreement to which section 147 of the Labour Relations Act 1987 is applied by clause 1 of this Schedule),—

- (a) Negotiations for the renewal of that award or agreement or for the making of an agreement in substitution for that agreement shall not lapse under—
 - (i) Section 147 (7) of the Labour Relations Act 1987; or
 - (ii) Clause 18 of the Third Schedule to this Act; and
- (b) Subject to clause 9 of this Schedule, the procedure set out in clauses 3 to 8 of this Schedule shall apply.

3. Arbitrating body—The arbitrating body, for the purposes of the compulsory arbitration, shall be the Arbitration Commission.

4. Statement as to state of negotiations—The union party and the employer party shall each provide the Arbitration Commission with a signed statement as to—

- (a) The issues in dispute; and
- (b) The position on those issues of the party providing the statement; and
- (c) Full particulars of the final offer being made by the party providing the statement.

FOURTH SCHEDULE—*continued*FINAL OFFER ARBITRATION—*continued*

5. Copies of statement—When the Arbitration Commission has received both of the statements required under clause 4 of this Schedule, it shall supply—

- (a) A copy of the union party's statement to the employer party; and
- (b) A copy of the employer party's statement to the union.

6. Hearing and determination of dispute—(1) The Arbitration Commission, after giving the parties an opportunity to be heard, shall, subject to the provisions of this Schedule, hear and determine the dispute and either—

- (a) Make an award; or
- (b) Settle the terms of the agreement and register it.

(2) The Commission shall, at the conclusion of the hearing and before making its determination, give each of the parties the opportunity to restate in writing, within a specified time or before a specified date, its final offer.

(3) Where any party so restates its final offer, the offer as restated shall be that party's final offer for the purposes of clause 8 of this Schedule.

7. Criteria—(1) The Arbitration Commission in hearing and determining a dispute in relation to a proposed award or agreement shall have regard to the criteria set out in section 148 (1) of the Labour Relations Act 1987.

(2) In applying these criteria, the Arbitration Commission shall comply with section 148 (2) of the Labour Relations Act 1987.

8. Duty of Arbitration Commission to accept one final offer—(1) In determining any dispute under this Schedule, the Arbitration Commission shall accept either the final position adopted by the union or the final position adopted by the State Services Commission.

(2) The Arbitration Commission must accept in full the final offer made by one of the parties.

(3) The Arbitration Commission may not adopt only a part or parts of one final offer and a part or parts of the other final offer.

9. Right of parties to agree on other methods—Nothing in this Schedule prevents the parties from agreeing to have the dispute or any issues in dispute determined in a way different from that set out in clauses 3 to 8 of this Schedule.

Section 87

FIFTH SCHEDULE
ENACTMENTS AMENDED

Title of Act	Amendment
1938, No. 9—The Carter Observatory Act 1938 (R.S. Vol. 1, p. 429)	By adding to section 20 the following subsections: “(2) The chief executive officer of the Board shall be paid such remuneration as is from time to time determined by the State Services Commission. “(3) The other officers and servants shall be paid such remuneration as the Board from time to time considers appropriate.”
1946, No. 26—The Veterinary Services Act 1946 (R.S. Vol. 11, p. 761)	By repealing paragraph (a) of section 10 (2) (as amended by section 3 (10) of the State Services Act 1962), and substituting the following paragraph: “(a) In the case of a person subject to the State Sector Act 1988, with the consent of the chief executive to whose control that person is subject; and”.
1948, No. 51—The Armed Forces Canteens Act 1948 (R.S. Vol. 1, p. 143)	By repealing section 6 (as substituted by section 3 (1) of the Armed Forces Canteens Amendment Act 1956), and substituting the following section: “6. Officers of the Council —The Council may from time to time appoint— “(a) A General Manager of the Council; and “(b) A Secretary of the Council; and “(c) Such other employees as may be deemed necessary to assist in the efficient carrying out of the administrative functions of the Council under this Act.”
1950, No. 20—The Medical Research Council Act 1950 (R.S. Vol. 10, p. 75)	By inserting, after section 10, the following new section: “10A. Remuneration of chief executive officer of Council —Notwithstanding anything in section 10 (1) (e) of this Act, the remuneration paid to the chief executive officer of the Council shall be determined from time to time by the State Services Commission.”
1956, No. 47—The Government Super-annuation Fund Act 1956 (R.S. Vol. 21, p. 209)	By repealing the definition of the term “controlling authority” in section 2 (as amended by section 3 (10) of the State Services Act 1962, section 2 (2) (a) of the Education Act 1964, and section 65 (1) of the Health Service Personnel Act 1983), and substituting the following definition:

FIFTH SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1956, No. 47—The Government Superannuation Fund Act 1956 (R.S. Vol. 21, p. 209)— <i>continued</i>	<p>“‘Controlling authority’, in relation to,—</p> <p>“(a) A contributor employed in the Public Service, means the chief executive of the Department concerned:</p> <p>“(b) A contributor employed in the Education service (other than in a university), means the chief executive of the Department of Education:</p> <p>“(c) A contributor employed in a university, means the Chairman of the University Grants Committee:</p> <p>“(d) A contributor employed in the Health Service, means the general manager of the appropriate area health board:</p> <p>“(e) A contributor employed in a State enterprise, means the chief executive of that enterprise:</p> <p>“(f) A contributor employed in any other part of the State services, means the employing authority concerned.”</p> <p>By repealing the definition of the term “Health Service” (as inserted by section 65 (1) of the Health Service Personnel Act 1983), and substituting the following definition:</p> <p>“‘Health Service’ means employment by an area health board established under the Area Health Boards Act 1983.”</p> <p>By repealing section 23A (8) (as added by section 4 (3) of the Government Superannuation Fund Amendment Act 1967), and substituting the following subsection:</p> <p>“(8) The Education Board employees to whom this section applies shall be those employed under the Education Authorities Employment Regulations 1982.”</p>
1957, No. 36—The Public Trust Office Act 1957 (Reprinted, 1976, Vol. 5, p. 4361)	By repealing subsections (2) and (5) of section 9.

FIFTH SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1963, No. 16—The Adult Education Act 1963 (R.S. Vol. 14, p. 1)	By inserting in section 19, after subsection (2), the following subsection: “(2A) Notwithstanding anything in subsection (2) of this section, the remuneration payable to the chief executive officer of the Council shall be determined from time to time by the State Services Commission.”
1964, No. 135—The Education Act 1964 (Reprinted, 1975, Vol. 3, p. 1699)	By omitting from section 165A (4) (as inserted by section 31 of the Education Amendment Act (No. 2) 1974) the words “with the consent of the State Services Co-ordinating Committee”.
1966, No. 6—The Trades Certification Act 1966 (R.S. Vol. 13, p. 761)	By repealing subsection (2) of section 20 (as substituted by section 33 (1) of the Higher Salaries Commission Act 1977), and substituting the following subsection: “(2) The Secretary shall be paid such remuneration as is determined from time to time by the State Services Commission.”
1966, No. 19—The Customs Act 1966 (R.S. Vol. 2, p. 57)	By omitting from section 33 the words “to the requirements of the Government Office Accommodation Board (as defined in regulation 70 of the Public Service Regulations 1964)”.
1966, No. 20—The Industrial Design Act 1966 (R.S. Vol. 17, p. 225)	By inserting in section 12, after subsection (3), the following subsection: “(3A) Notwithstanding anything in subsections (2) and (3) of this section, the Director of the Industrial Design Institute shall be paid such remuneration as is from time to time determined by the State Services Commission.” By repealing paragraph (a) of section 12 (5), and substituting the following paragraph: “(a) In the case of a person subject to the State Sector Act 1988, with the consent of the chief executive to whose control that person is subject; and”.
1966, No. 21—The Consumer Council Act 1966 (R.S. Vol. 17, p. 149)	By inserting in section 18, after subsection (3), the following subsection: “(3A) Notwithstanding anything in subsections (2) and (3) of this section, the Director of the Consumers Institute shall be paid such remuneration as is from time to time determined by the State Services Commission”.

FIFTH SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1967, No. 38—The Tokelau Amendment Act 1967 (Reprinted, 1976, Vol. 5, p. 4498)	<p>By repealing the definition of the term “New Zealand controlling authority” in section 3, and substituting the following definition:</p> <p>“‘New Zealand controlling authority’ means, in respect of any person employed in any Department of the New Zealand Public Service, the chief executive of that Department, and, in respect of a person employed in any other branch of the New Zealand Government Service, the Minister in charge of that branch.”.</p>
1969, No. 24—The New Zealand Security Intelligence Service Act 1969	<p>By omitting from section 6 (2) (as substituted by section 6 (1) of the New Zealand Security Intelligence Service Amendment Act 1977) the words “any subsequent Order in Council prescribing the salary for the office”, and substituting the words “the Higher Salaries Commission Act 1977”.</p> <p>By repealing section 14 (as substituted by section 9 of the New Zealand Security Intelligence Service Amendment Act 1977), and substituting the following section:</p> <p>“14. Commissioner of Security Appeals—(1) The Governor-General shall from time to time appoint a suitable person to be Commissioner of Security Appeals.</p> <p>“(2) The person appointed to be Commissioner of Security Appeals shall be a barrister or solicitor of the High Court of not less than 7 years’ practice, whether or not that person holds or has held any judicial office. Any person appointed as Commissioner of Security Appeals may hold that office concurrently with any other office held by that person.</p> <p>“(3) The Commissioner of Security Appeals shall hold office for a term of 3 years, but may from time to time be reappointed:</p> <p>“Provided that, unless the Commissioner vacates office under subsection (4) of this section, he or she shall continue in office until his or her successor comes into office.</p> <p>“(4) The Commissioner may be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or</p>

FIFTH SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1969, No. 24—The New Zealand Security Intelligence Service Act 1969— <i>continued</i>	misconduct proved to the satisfaction of the Governor-General, or may at any time resign his or her office by written notice given to the Minister.” By repealing paragraph (a) of section 19 (2), and substituting the following paragraph: “(a) That there is an adequate remedy or right of appeal; or”.
1971, No. 25—The Mining Act 1971 (R.S. Vol. 17, p. 355)	By omitting from section 10 (3) the words “State Services Commission, after consultation with the Secretary, determines”, and substituting the words “chief executive determines.”
1971, No. 60—The Department of Social Welfare Act 1971	By repealing paragraph (b) of section 7N (as inserted by section 31 of the Social Security Amendment Act 1987), and substituting the following paragraph: “(b) To appoint officers of the Public Service in accordance with such delegations as may from time to time be given to the committee by the Director-General.”.
1972, No. 35—The New Zealand Council for Educational Research Act 1972	By inserting in section 15, after subsection (1), the following subsection: “(1A) Notwithstanding anything in subsection (1) of this section, the remuneration payable to the chief executive officer of the Council shall be determined from time to time by the State Services Commission.”
1972, No. 36—The Testing Laboratory Registration Act 1972	By inserting in section 15, after subsection (2), the following subsection: “(2A) Notwithstanding anything in subsection (2) of this section, the remuneration payable to the chief executive of the Council shall be determined by the State Services Commission.” By repealing paragraph (a) of section 15 (4), and substituting the following paragraph: “(a) In the case of a person subject to the State Sector Act 1988, with the consent of the chief executive to whose control that person is subject.”.

FIFTH SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1972, No. 118—The Equal Pay Act 1972 (R.S. Vol. 18, p. 85)	By repealing paragraph (a) of the definition of the term “employee” in section 2 (1), and substituting the following paragraph: “(a) Any person whose rate of remuneration is fixed under the State Sector Act 1988.”
1974, No. 6—The Scientific and Industrial Research Act 1974	By repealing paragraph (d) of the definition of the term “employee” in section 2 (1). By inserting, after section 5, the following new section: “ 5. Remuneration of chief executive of research association —The remuneration payable to the chief executive of any research association set up with the encouragement and assistance of the Minister pursuant to section 5 (f) of this Act shall be determined from time to time by the State Services Commission.”
1974, No. 19—The Housing Corporation Act 1974	By repealing subsections (3) to (5) of section 5, and substituting the following subsections: “(3) In addition to his or her functions as chairman of the Corporation, the Director-General shall be deemed, subject to subsection (4) of this section, to be the chief executive of the Corporation for the purposes of the State Sector Act 1988. “(4) The Director-General shall be responsible to the Corporation for the general conduct and the efficient, effective, and economical management of the functions and activities of the Corporation. “(5) Section 32 of the State Sector Act 1988 shall be read subject to this section. “(6) The remuneration and other payments payable to the Director-General shall be paid by the Corporation out of its own funds.”
1974, No. 66—The Local Government Act 1974 (R.S. Vol. 5, p. 77)	By repealing section 10 (as substituted by section 2 of the Local Government Amendment Act (No. 3) 1986), and substituting the following section: “ 10. Remuneration, allowances, and expenses —(1) The Commission is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. “(2) There shall be paid to— “(a) Members of the Commission:

FIFTH SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1974, No. 66—The Local Government Act 1974 (R.S. Vol. 5, p. 77)— <i>continued</i>	<p>“(b) Deputy members of the Commission appointed under section 6 of this Act:</p> <p>“(c) Temporary members appointed under section 8 of this Act:</p> <p>“(d) Conciliators appointed under section 27 of this Act who are not members of the Commission—remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.”</p>
1974, No. 67—The Queen Elizabeth the Second Arts Council of New Zealand Act 1974	<p>By inserting in section 14, after subsection (3), the following subsection:</p> <p>“(3A) Notwithstanding anything in subsections (2) and (3) of this section, the remuneration payable to the chief executive officer shall be determined from time to time by the State Services Commission.”</p>
1977, No. 65—The Public Finance Act 1977	<p>By omitting from section 55 (3) (a) the words “(within the meaning of that expression in the State Services Remuneration and Conditions of Employment Act 1969)”.</p>
1981, No. 5—The Psychologists Act 1981	<p>By repealing the definition of the term “Employing Authority” in section 2.</p> <p>By repealing the definition of the term “State services” in section 2, and substituting the following definition:</p> <p>“‘State services’ has the meaning given to it by the State Sector Act 1988.”</p>
1982, No. 156—The Official Information Act 1982 (R.S. Vol. 21, p. 1)	<p>By repealing clause 12 of the Second Schedule, and substituting the following clause:</p> <p>“12. Remuneration, allowances, and expenses of members of Authority—</p> <p>(1) The Authority is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.</p> <p>“(2) The members of the Authority shall be paid remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.”</p>

FIFTH SCHEDULE—continued
ENACTMENTS AMENDED—continued

Title of Act	Amendment
1983, No. 16—The Apprenticeship Act 1983	By omitting from section 19 (1) (a) the words "Subject to section 70 (3) of the State Services Act 1962,".
1985, No. 159—The Social Security Amendment Act (No. 2) 1985	By repealing section 29.
1986, No. 35—The Union Representatives Education Leave Act 1986	By repealing the definition in section 2 (1) of the term "employing authority". By repealing the definition of the term "State services" in section 2 (1), and substituting the following definition: " 'State services' has the meaning given to it by section 2 (1) of the State Sector Act 1988:".
1986, No. 127—The Environment Act 1986	By repealing the definition in section 2 (1) of the term "State Services Co-ordinating Committee". By repealing section 9 (4), and substituting the following subsection: "(4) The Commissioner shall be entitled to such annual leave, sick leave, and other leave as may be determined by the Speaker of the House of Representatives".
1987, No. 13—The Recreation and Sport Act 1987	By repealing section 36.
1987, No. 129—The Parental Leave and Employment Protection Act 1987	By repealing paragraph (a) of the definition of the term "State employee", and substituting the following paragraph: "(a) Every person whose rate of remuneration is determined under the State Sector Act 1988:".
1988, No. 5—The Standards Act 1988	By repealing the definition of the term "State services" in section 2 (1), and substituting the following definition: " 'State services' has the meaning given to it by section 2 (1) of the State Sector Act 1988:". By adding to section 12 (3) the following proviso: "Provided that the remuneration payable to the chief executive officer of the Council shall be determined from time to time by the State Services Commission."

Section 88 (1)

SIXTH SCHEDULE
ENACTMENTS REPEALED

- 1956, No. 45—The Armed Forces Canteens Amendment Act 1956: Section 3 (1). (R.S. Vol. 1, p. 152.)
- 1962, No. 132—The State Services Act 1962. (R.S. Vol. 14, p. 601.)
- 1964, No. 57—The State Services Amendment Act 1964. (R.S. Vol. 14, p. 661.)
- 1965, No. 68—The State Services Amendment Act 1965. (R.S. Vol. 14, p. 661.)
- 1966, No. 86—The State Services Amendment Act 1966. (R.S. Vol. 14, p. 662.)
- 1973, No. 15—The State Services Amendment Act 1973. (R.S. Vol. 14, p. 662.)
- 1973, No. 92—The State Services Amendment Act (No. 2) 1973. (R.S. Vol. 14, p. 664.)
- 1974, No. 122—The State Services Amendment Act 1974. (R.S. Vol. 14, p. 664.)
- 1977, No. 95—The State Services Conditions of Employment Act 1977. (R.S. Vol. 14, p. 669.)
- 1978, No. 37—The State Services Amendment Act 1978. (R.S. Vol. 14, p. 664.)
- 1978, No. 41—The State Services Conditions of Employment Amendment Act 1978. (R.S. Vol. 14, p. 771.)
- 1981, No. 94—The State Services Amendment Act 1981. (R.S. Vol. 14, p. 666.)
- 1981, No. 132—The State Services Conditions of Employment Amendment Act 1981. (R.S. Vol. 14, p. 772.)
- 1982, No. 23—The State Services Amendment Act 1982. (R.S. Vol. 14, p. 666.)
- 1982, No. 110—The State Services Amendment Act (No. 2) 1982. (R.S. Vol. 14, p. 667.)
- 1982, No. 160—The State Services Amendment Act (No. 3) 1982. (R.S. Vol. 14, p. 667.)
- 1983, No. 47—The State Services Conditions of Employment Amendment Act 1983. (R.S. Vol. 14, p. 773.)
- 1983, No. 135—The Health Service Personnel Act 1983.
- 1985, No. 102—The State Services Conditions of Employment Amendment Act 1985.
- 1985, No. 144—The Health Service Personnel Amendment Act 1985.
- 1985, No. 164—The Health Service Personnel Amendment Act (No. 2) 1985.
- 1986, No. 50—The Local Government Amendment Act (No. 3) 1986: Section 2.
- 1987, No. 17—The State Services Conditions of Employment Amendment Act 1987.
- 1987, No. 81—The State Services Conditions of Employment Amendment Act (No. 2) 1987.
- 1987, No. 121—The Health Service Personnel Amendment Act 1987.
- 1987, No. 123—The State Services Conditions of Employment Amendment Act (No. 3) 1987.
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SEVENTH SCHEDULE
REGULATIONS AND ORDERS REVOKED

Section 89

Title	Statutory Regulations Serial Number
The Public Service Regulations 1964	1964/115
The Public Service Regulations 1964, Amendment No. 1	1965/123
The Public Service Regulations 1964, Amendment No. 2	1967/39
The Public Service Regulations 1964, Amendment No. 3	1969/176
The Public Service Regulations 1964, Amendment No. 6	1973/151
The State Services Salary Order 1974	1974/32
The Public Service Regulations 1964, Amendment No. 8	1976/78
The State Services Conditions of Employment Order 1978	1978/218
The State Services Conditions of Employment Order 1979	1979/56
The State Services Conditions of Employment Act Suspension Order 1979	1979/271
The State Services Conditions of Employment Order 1981	1981/147
The State Services Conditions of Employment Order 1982	1982/272
The State Services Conditions of Employment Order 1983	1983/17
The Public Service Regulations 1964, Amendment No. 9	1983/88
The Health Service Personnel (Principal Officers) Order 1984	1984/79
The Health Medical Officers' Advisory Committee Regulations 1984	1984/271
The Health Medical Officers' Grading Committee Regulations 1985	1985/31
The Public Service Regulations 1964, Amendment No. 10	1985/178
The State Services Conditions of Employment Order 1985	1985/274
The Public Service Regulations 1964, Amendment No. 11	1985/285
The Health Service Personnel (Principal Officers) Order 1984, Amendment No. 1	1985/305
The Health Service Personnel Amendment Act Commencement Order 1986	1986/196
The Public Service Regulations 1964, Amendment No. 12	1987/34
The State Services Conditions of Employment Order 1987	1987/210

SEVENTH SCHEDULE—*continued*
REGULATIONS AND ORDERS REVOKED—*continued*

Title	Statutory Regulations Serial Number
The Health Service Personnel (Principal Officers) Order 1984, Amendment No. 2	1987/361
The State Services Salary Order (No. 2) 1987	1987/404

This Act is administered in the Office of the State Services Commission.
