



ANALYSIS

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1978, No. 37

An Act to amend the State Services Act 1962

[12 October 1978]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the State Services Amendment Act 1978, and shall be read together with and deemed part of the State Services Act 1962 (hereinafter referred to as the principal Act).

2. Reappointment after absence for child care purposes—The principal Act is hereby amended by inserting, after section 31, the following section:

“31A. (1) A person who has resigned from the Public Service is eligible for reappointment to the Public Service, in accordance with this section, if, the Commission, on application by the person, declares that it is satisfied—

“(a) That the person was an officer at the time of the resignation; and

“(b) That the person, during the period that has elapsed since the resignation,—

“(i) Has cared for one or more pre-school children, being a child or children dependent on that person; and

“(ii) Has not devoted a substantial part of that period to paid employment; and

“(c) Subject to subsection (3) of this section, that the period that has elapsed since the resignation, together with any other period of absence (being a period of absence to which subsection (1) (b) of this section applies) which has preceded any previous appointment of the person under this section, does not exceed 4 years.

“(2) Where 2 persons have been caring for the same pre-school child or pre-school children, both of those persons qualify for reappointment under subsection (1) of this section only if—

“(a) They each meet the requirements of that subsection; and

“(b) The aggregate of their respective periods of absence (being periods of absence to which subsection (1) (b) of this section applies) does not exceed 4 years.

“(3) In calculating for the purposes of subsection (1) (c) or subsection (2) of this section the period that has elapsed since the resignation of any officer, any period during which that officer would, but for the resignation, have been on maternity leave shall not be included.

“(4) A person who is eligible for reappointment to the Public Service under this section may be appointed, as if that person were an officer of the Public Service, to fill a vacancy in a position in the Public Service for which that person is qualified.

“(5) Where the position—

“(a) Involves duties and responsibilities which are the same or substantially the same as those of the position held at the time of resignation; and

“(b) Does not have a current maximum salary that exceeds the current maximum salary for the grade or the nearest equivalent grade accorded, at the time at which the reappointment is made, to the position held at the time of resignation; and

“(c) Is in the same Department as that in which the person was employed at the time of resignation,— subsections (4) and (5) of section 28 of this Act shall not apply to the appointment and, notwithstanding anything in section 64 of this Act, no appeal by any officer shall lie against the appointment of any person under this section.

“(6) Section 27 (1) of this Act shall not apply to an appointment under this section; but a person appointed under this section shall not have any right of appeal under section 64 of this Act until he has been so appointed.

“(7) Except as provided in subsections (4) to (6) of this section, nothing in this section shall affect the provisions of section 64 of this Act.

“(8) The continuous permanent service of any person who was last appointed to the Public Service under this section shall for the purposes of the proviso to section 28 (5) of this Act be deemed to include that period of continuous permanent service which immediately preceded the resignation referred to in subsection (1) of this section.

“(9) Notwithstanding that the Commission has declared a person to be eligible for appointment under this section, that person shall cease to be eligible for appointment under this section if he is not appointed under subsection (4) of this section within the period comprising the period applicable under subsection (1) (c) or subsection (2) of this section extended, in each case, by 3 months.”

3. Classification and Grading Committees—Section 46 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Each such Committee shall consist of—

“(a) A Chairman, who shall be appointed by the Commission after consultation with the New Zealand Public Service Association (Incorporated) and who shall be an officer or a retired officer:

“(b) An official member, who shall be an officer or a retired officer:

“(c) One other member, who shall be appointed on the nomination of the New Zealand Public Service Association (Incorporated) and who shall be—

“(i) An officer; or

“(ii) A retired officer; or

“(iii) A retired employee of that Association.”

4. Repeal of redundant provision—Section 51 of the principal Act is hereby repealed.

5. Unauthorised absence—Section 60 of the principal Act is hereby amended by repealing the proviso to subsection (1), and substituting the following proviso:

“Provided that notice of the effect of this section shall during such absence, but not sooner than 14 days after the first day of such absence, be sent by post in a registered letter addressed to the employee at his usual or last known place of abode, and he shall not be deemed to have so forfeited office if he returns to duty before the expiration of the week beginning with the day after the date on which the notice is so sent or the expiration of 4 weeks absence from duty, whichever is the later.”

6. Constitution of Appeal Board—Section 61 (2) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Two service members, who shall be appointed as service members on the nomination of the New Zealand Public Service Association (Incorporated) and who shall be—

“(i) Officers; or

“(ii) Retired officers; or

“(iii) Retired employees of that Association:

“Provided that 2 officers employed in the same Department shall not be so appointed.”

7. Rights of appeal—(1) Section 64 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsections:

“(7) In any appeal the onus of proof shall rest upon the appellant:

“Provided that, in any appeal against the appointment to the Public Service of any person who is not an officer, and in any appeal under subsection (1) (b) of this section, and in any appeal against any decision made by the Commission in respect of a charge made against an officer under section 58 of this Act (not being only a decision imposing a penalty, or directing the recovery of any amount, under that section), the onus of proof shall rest upon the Commission.

“(7A) At the hearing of any appeal—

“(a) Being only an appeal under subsection (1) (c) of this section against the penalty imposed by the Commission under section 55 or section 58 of this Act; or

“(b) Being only an appeal under subsection (1) (d) of this section against any amount directed by the Commission to be recovered under section 58 of this Act; or

“(c) Being only an appeal limited to the matters described in paragraphs (a) and (b) of this subsection,—
it shall be for the appellant or his representative to commence argument on the merits of the appeal.”

(2) Section 64 (17) of the principal Act is hereby amended by omitting the words “or one that should not have been made,”.

8. Public Service apprentices—(1) Section 70 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsections:

“(5) Subject to subsections (5A) and (5B) of this section, on the execution of an indenture of apprenticeship in accordance with subsection (1) of this section, the appointment of the apprentice thereby bound shall be deemed to be confirmed and he shall be deemed to be an officer of the Public Service.

“(5A) If an indenture of apprenticeship is terminated before the term of the apprenticeship is completed, the apprentice shall cease to be employed in the Public Service unless the Commission decides to transfer him to other duties.

“(5B) Where an apprentice is transferred to other duties pursuant to subsection (5A) of this section, he shall be on probation for a period of 6 months from the date of the transfer and shall be employed during that period, and any extension thereof, subject to the provisions of section 27 of this Act.”

(2) Section 2 of the principal Act is hereby amended by inserting in the definition of the term “probationer”, after the words “or section 55”, the words “or section 70 (5B)”.

9. Offence to attempt to influence Commission—Section 76 of the principal Act is hereby amended by inserting in subsection (3), and also in subsection (4), after the word “Commission” wherever it appears, the words “or any other person or persons to whom the Commission has delegated its powers under section 14 of this Act”.

10. Offices and positions exempt from appeal—(1) The principal Act is hereby further amended by repealing the Third Schedule (as substituted by section 4 (1) of the State Services Amendment Act 1973), and substituting the Third Schedule set out in the First Schedule to this Act.

(2) The enactments specified in the Second Schedule to this Act are hereby consequentially repealed.

SCHEDULES

FIRST SCHEDULE

Section 10 (1)

NEW THIRD SCHEDULE TO PRINCIPAL ACT

“THIRD SCHEDULE Sections 28 (3), 29, 64

OFFICES AND POSITIONS EXEMPT FROM APPEAL

Department			Office or Position
Agriculture and Fisheries	.....		Director-General. Assistant Director-General.
Audit	.....	.....	Assistant Controller and Auditor-General.
Building	.....	Performance	General Manager.
Guarantee	.....	Corporation	
Customs	.....	.....	Comptroller. Assistant Comptroller.
Defence	.....	.....	Secretary of Defence. Deputy Secretary of Defence.
Education	.....	.....	Director-General. Assistant Director-General. Assistant Director-General (Administrative). National Librarian.
Energy	.....	.....	Secretary. Deputy Secretary. Assistant Secretary.
Foreign Affairs	.....	.....	Secretary. Deputy Secretary.
Forest Service	.....	.....	Director-General. Deputy Director-General.
Government Life Insurance Office			Government Insurance Commissioner. Deputy Government Insurance Commissioner.
Government Printing Office			Government Printer. Deputy Government Printer.
Health	.....	.....	Director-General. Deputy Director-General. Deputy Director-General (Administrative). Deputy Director-General (Public Health).
Housing Corporation of New Zealand		of	Director-General. Assistant Director-General.

FIRST SCHEDULE—*continued*NEW THIRD SCHEDULE TO PRINCIPAL ACT—*continued*

Department	Office or Position
Inland Revenue	Commissioner. Deputy Commissioner.
Internal Affairs	Secretary. Deputy Secretary.
Justice	Secretary. Deputy Secretary.
Labour	Secretary. Deputy Secretary. Assistant Secretary.
Lands and Survey	Director-General. Deputy Director-General. Surveyor-General.
Maori Affairs	Secretary. Deputy Secretary.
Prime Minister's	Permanent Head. Secretary of the Cabinet. Clerk of the Executive Council. Secretary to the Governor-General. Principal Private Secretary to the Prime Minister.
Public Trust	Public Trustee. Assistant Public Trustee.
Rural Banking and Finance Corporation	General Manager. Deputy General Manager.
Scientific and Industrial Research	Director-General. Assistant Director-General.
Social Welfare	Director-General. Assistant Director-General.
State Insurance	General Manager. Deputy General Manager.
Statistics	Government Statistician. Deputy Government Statistician.
Tourist and Publicity	General Manager. Deputy General Manager.
Trade and Industry	Secretary. Deputy Secretary.
Transport	Secretary. Deputy Secretary. Director, Civil Aviation Division. Director, Road Transport Division. Director, Marine Division. Director, Meteorological Services.
Treasury	Secretary. Deputy Secretary. Assistant Secretary.
Valuation	Valuer-General. Deputy Valuer-General.
Works and Development	Commissioner. Assistant Commissioner. Government Architect.
Not Attached to a Department	Office Commissioner for the Environment."

SECOND SCHEDULE

Section 10 (2)

ENACTMENTS REPEALED

- 1973, No. 15—The State Services Amendment Act 1973: Section 4 and the First and Second Schedules.
- 1974, No. 3—The Rural Banking and Finance Corporation Act 1974: So much of the Schedule as relates to the Third Schedule to the State Services Act 1962.
- 1974, No. 19—The Housing Corporation Act 1974: So much of the First Schedule as relates to the Third Schedule to the State Services Act 1962.
- 1974, No. 73—The Maori Affairs Amendment Act 1974: So much of the First Schedule as relates to the Third Schedule to the State Services Act 1962.
- 1977, No. 33—The Ministry of Energy Act 1977: So much of Part IX of the Second Schedule as relates to the Third Schedule to the State Services Act 1962.
- 1977, No. 44—The Building Performance Guarantee Corporation Act 1977: Section 42.
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This Act is administered in the State Services Commission.
