



ANALYSIS

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1987, No. 124

An Act to amend the State Services Act 1962

[1 July 1987]

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 Services Amendment Act 1987, and shall be read together with and deemed part of the State Services Act 1962 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of August 1987.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, in its appropriate alphabetical order, the following definition:

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

(2) The said section 2 is hereby amended by adding to the definition of the term “employee” the words “or as a contract employee under section 70A of this Act”.

(3) The said section 2 is hereby further amended by inserting, after the definition of the term “employee” (as amended by subsection (2) of this section), the following definition:

“ ‘Enterprise unit’ has the meaning given to it by section 2 of the State Services Conditions of Employment Act 1977:”.

(4) The said section 2 is hereby further amended by repealing the definition of the term “Government Service Tribunal” (as substituted by section 55 (2) of the State Services Remuneration and Conditions of Employment Act 1969).

(5) The said section 2 is hereby further amended by repealing the definition of the term “promotion”, and substituting the following definition:

“ ‘Promotion’—

“(a) Means advancement from one grade to another within an occupational class or transfer from one occupational class to another involving in either case an increase in maximum salary; but

“(b) Does not include—

“(i) An appointment to an occupational class from an enterprise unit or vice versa; or

“(ii) An appointment to or from a position for which there is a range of rates of remuneration prescribed:”.

(6) The said section 2 is hereby further amended by inserting, in its appropriate alphabetical order, the following definition:

“ ‘Ranges of rates of remuneration’ means a remuneration structure that—

“(a) Fixes an upper limit and a lower limit of remuneration; and

“(b) Is not confined to fixed salary levels or incremental steps within those limits; and

“(c) Allows the Commission to decide from time to time, within those limits, the actual remuneration that, subject to any other conditions of employment, is to be paid to the holder of a position or to any particular holder of a position:”.

3. The Public Service—Section 22 (2) of the principal Act (as substituted by section 3 (1) of the State Services Amendment Act (No. 2) 1985) is hereby amended by adding the following paragraph:

“(j) Any person employed as a contract employee under section 70A of this Act.”

4. Conditions of service of exempted employees—

(1) The principal Act is hereby amended by repealing section 24 (as amended by section 66 (2) of the Parliamentary Service Act 1985).

(2) Section 66 (2) of the Parliamentary Service Act 1985 is hereby consequentially repealed.

5. Appointments of officers to vacancies—Section 28 of the principal Act is hereby amended by adding the following subsection:

“(8) The Commission, in making an appointment to—

“(a) A position in an enterprise unit; or

“(b) A position for which a range of rates of remuneration is prescribed,—

shall have regard to the foregoing provisions of this section notwithstanding that the appointment may not be a promotion as defined in this Act.”

6. Business taken over—Section 30 (2) of the principal Act is hereby amended by inserting, after the words “shall be classified and graded”, the words “or, where applicable, placed at an appropriate level in an enterprise unit”.

7. Reappointment after absence for child care purposes—Section 31A (5) of the principal Act (as inserted by section 2 of the State Services Amendment Act 1978) is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Either—

“(i) 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; or

“(ii) In the case of a person who held, at the time of resignation, a position in an enterprise unit or a position in respect of which a range of rates of remuneration was applicable, entitles the person to a rate of remuneration substantially the same as the current rate of remuneration of the position held at the time of resignation; and”.

8. Redundancy—Section 36 (2) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) If any such reduction of salary is certified by the Commission to be made on the ground only that no work equivalent to the salary previously received by the officer affected is at the time of the reduction available, and the officer affected elects to continue in the Public Service at that reduced salary, the officer shall either—

“(i) Remain eligible for promotion as from the grade to which the officer’s salary before the reduction was incident, notwithstanding the reduction, and be entitled to employment on the class of work to which the officer’s previous salary was appropriate as soon as a vacancy occurs therein in preference to any other officer of the same or a lower grade whose salary has not been reduced; or

“(ii) In the case of a person who held, at the time of the reduction, a position in an enterprise unit or a position in respect of which a range of rates of remuneration was applicable, be entitled to employment on the class of work to which the officer’s previous salary was appropriate as soon as a vacancy occurs therein in preference to any other officer whose salary has not been reduced.”

9. Security transfers—Section 38 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) If the Security Review Authority confirms the Commission’s opinion, or if the officer agrees to be transferred under this section, the Commission may transfer the officer; and, in that event, shall as far as is practicable place the officer in a position commensurate with the officer’s qualifications and in any event shall protect the remuneration of the officer at the date of the transfer for a period of not less than 2 years from that date, after which period the Commission may remunerate the officer at a rate appropriate to the position that the officer then occupies. Without restricting the foregoing provisions of this section, it is hereby declared that there shall be a continuing responsibility on the Commission to place the officer in a position commensurate with the officer’s qualifications and salary until the officer has been so placed or while the officer continues to occupy a position at a lower salary than that which was being paid to the officer when the officer was transferred under this section.”

10. Failure to comply with a direction to transfer—The principal Act is hereby amended by repealing section 39, and substituting the following section:

“39. (1) Any employee who fails to comply with a direction of the Commission requiring the employee to transfer from one position or locality to another or to take up an appointment to which section 37 (2) of this Act applies may be forthwith dismissed or have his or her remuneration reduced (with or without a consequent reduction in grading) by the Commission, unless the employee justifies the noncompliance in the opinion of the Commission by adducing some valid and sufficient reason therefor.

“(2) There shall be no right of appeal against any dismissal or reduction in remuneration (with or without a consequent reduction in grading) under this section.

“(3) Nothing in subsection (2) of this section affects the right to appeal against transfer conferred by section 64 (1) (f) of this Act.”

11. Occupational classes and salary scales—(1) Section 41 of the principal Act is hereby amended by repealing subsection (4) (as substituted by section 55 (4) of the State Services Remuneration and Conditions of Employment Act 1969 and saved by section 84 (2) of the State Services Conditions of Employment Act 1977), and substituting the following subsection:

“(4) The Commission shall subdivide each occupational class into grades according to its assessment of the relative levels of responsibility and skill which are or may be required to be exercised by officers or probationers of the occupational class.”

(2) Section 41 of the principal Act is hereby further amended by omitting from subsection (9) (as substituted by section 55 (4) of the State Services Remuneration and Conditions of Employment Act 1969 and saved by section 84 (2) of the State Services Conditions of Employment Act 1977) the words “Government Service Tribunal”, and substituting the words “Arbitration Commission”.

(3) Section 41 of the principal Act is hereby further amended by repealing subsection (10) (as substituted by section 55 (4) of the State Services Remuneration and Conditions of Employment Act 1969 and saved by section 84 (2) of the State Services Conditions of Employment Act 1977), and substituting the following subsection:

“(10) Any service organisation whose members are affected may apply to the Commission for the establishment of an occupational class in accordance with subsections (2) and (3) of this section, or for a review of any matter specified in subsections (2) and (3) of this section relating to any occupational class at any time after the expiration of 10 months from the date on which any Public Service determination or order issued by the Arbitration Commission relating to that class comes into force; and if no determination is issued as a result of the application within 2 months after the date of the lodging of the application, the application may be forwarded to the Arbitration Commission by the service organisation, and in that event shall be deemed to be an application under subsection (9) of this section for an order varying the determination or Arbitration Commission order for the time being governing that occupational class:

“Provided that, where the Commission has made a determination following on the application of a service organisation, the service organisation may apply to the Arbitration Commission for an order in respect of only those parts (if any) of its application to which the determination of the Commission has not given full effect.”

(4) Section 41 of the principal Act is hereby further amended by adding the following subsection:

“(11) Nothing in subsections (2) to (10) of this section shall apply in relation to—

“(a) Any employee who holds a position in an enterprise unit;
or

“(b) Any position that is included within an enterprise unit.”

12. Classification, grading, and salaries of permanent staff—The principal Act is hereby amended by repealing section 43 (as amended by section 55 (10)(a) of the State Services Remuneration and Conditions of Employment Act 1969), and substituting the following section:

“43. (1) The Commission—

“(a) Shall place every officer and probationer in an occupational class or enterprise unit; and

“(b) Where it places an officer and probationer in an occupational class, shall also place that officer or probationer in a grade in that occupational class that accords to the level of responsibility and skill required to be exercised in the performance of the duties allocated to the officer or probationer.

“(2) Except where a determination prescribes a range of rates of remuneration for the grade in which an officer or probationer is placed, salary shall be payable to each officer and probationer according to his or her grading, and on promotion, unless the Commission otherwise determines, an officer or probationer shall be awarded the minimum salary of the new grade, but not less than his or her previous salary, and proceed by annual increments to the maximum salary prescribed for the grade.

“(3) Nothing in subsection (2) of this section requires the Commission to prescribe grades for an enterprise unit.”

13. Continuous review of classification and grading—Section 44 of the principal Act is hereby amended by repealing subsection (1) (as amended by section 55 (5) of the State Services Remuneration and Conditions of Employment Act 1969), and substituting the following subsection:

“(1) The Commission shall be responsible for conducting a continuous review of the classification and grading of the Public Service, and in discharging this responsibility shall—

“(a) Ascertain whether or not there is need to adjust the scope and content of occupational classes or enterprise units, or the conditions of employment of any occupational class or enterprise unit or the salary scale or grading pattern of any occupational class:

“(b) Ensure that all positions are placed in—

“(i) The occupational class most closely related to the nature of the duties involved; or

“(ii) An enterprise unit:

“(c) Ensure that every position in each occupational class is placed in a grade appropriate to the level of responsibility and skill required in the discharge of its functions:

“(d) Ensure that every position in each enterprise unit is placed at a level appropriate to the level of responsibility and skill required in the discharge of its functions.”

14. Review of grading—Section 45 of the principal Act is hereby amended by adding the following subsection:

“(4) This section shall not apply to—

“(a) Any officer who holds a position in an enterprise unit; or

“(b) Any decision of the Commission as to the remuneration to be paid to an officer who holds a position in

respect of which ranges of rates of remuneration are prescribed.”

15. Classification and Grading Committees—Section 46 of the principal Act is hereby amended by adding the following subsection:

“(10) No Committee appointed under subsection (1) of this section shall have power to investigate—

“(a) Any matter relating to the classification or grading of any officer who holds a position in an enterprise unit; or

“(b) Any decision of the Commission as to the remuneration to be paid to an officer who holds a position in respect of which ranges of rates of remuneration are prescribed.”

16. Salary increments—Section 50 of the principal Act is hereby amended by adding the following subsection:

“(3) This section shall not apply in respect of any employee—

“(a) Who holds a position in an enterprise unit; or

“(b) Who holds a position in respect of which ranges of rates of remuneration are prescribed.”

17. Rights of appeal in respect of enterprise units and positions for which range of rates of remuneration is prescribed—The principal Act is hereby amended by inserting, after section 64, the following section:

“64A. (1) The Commission and the appropriate service organisation may, by agreement in writing, confer on an officer a right to appeal to the Public Service Appeal Board in respect of an appointment to or from—

“(a) A position in an enterprise unit; or

“(b) A position for which a range of rates of remuneration is prescribed.

“(2) An agreement under subsection (1) of this section may provide that the right of appeal conferred by the agreement is to be available only if conditions specified in the agreement are satisfied or if circumstances specified in the agreement exist.

“(3) Section 64 (other than subsections (1), (2), (3), (6), (7A), and (18)) of this Act shall apply, with all necessary modifications, in respect of any appeal conferred by an agreement under subsection (1) of this section.

“(4) Every agreement under subsection (1) of this section shall be notified within the Public Service by notice in the *Public Service Official Circular* or otherwise.

“(5) Except where an appeal is conferred by an agreement under subsection (1) of this section, no appeal shall lie under this Act in respect of an appointment of the kind described in subsection (1) of this section.

“(6) Nothing in this section prevents the Commission and the appropriate service organisation agreeing on any other procedure for the review of an appointment of the kind described in subsection (1) of this section.”

18. Individual contracts of service—The principal Act is hereby amended by inserting, after section 70, the following section:

“70A. (1) The Commission may engage any person as an employee of the Public Service under an individual contract of service.

“(2) Any person engaged under subsection (1) of this section shall not, by virtue only of that person’s engagement under this section, be on the permanent staff of the Public Service.

“(3) The power conferred by subsection (1) of this section may be exercised only where—

“(a) The employee is required to provide specialist advice and an employee with the necessary skills or knowledge is not normally available within the Public Service; or

“(b) The employee is required to provide specialist advice and the task in respect of which the employee is required to provide specialist advice is a short-term temporary task; or

“(c) It is agreed between the Commission and the appropriate service organisation that the employee is to be employed under this section.

“(4) The Commission shall, before engaging any person under subsection (1) of this section, in reliance on subsection (3) (a) or subsection (3) (b) of this section, consult with the appropriate service organisation or service organisations, either generally or in the particular case.

“(5) Persons engaged under subsection (1) of this section shall be engaged for such terms, and on such terms and conditions of service, as the Commission decides.

“(6) This section shall have effect notwithstanding anything in the State Services Conditions of Employment Act 1977 requiring the conditions of employment of employees of the Public Service to be prescribed by determination under that Act.”

19. Officers and positions exempt from appeal—The Third Schedule to the principal Act (as substituted by section 10 (1) of the State Services Amendment Act 1978) is hereby amended by inserting, after the item relating to the Government Computing Service (as inserted by section 6 (4) of the State Services Amendment Act (No. 2) 1985), the following item:

“Not attached to a
Department

Superintendent of the
National Provident Fund.”

This Act is administered in the State Services Commission.
