

PUBLIC SERVICE AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

THIS Bill makes provision with respect to—(a) New appointments to the Public Service; (b) the promotion of officers within the Service by way of transfer to higher positions; (c) the hearing and determination of complaints and charges against officers of the Service; (d) the constitution of the Board of Appeal, the grounds upon which officers may lodge an appeal against a decision of the Commissioner, and the procedure for hearing such appeals; (e) consequential repeals of provisions in the principal Act.

The Bill, which relates almost wholly to matters of procedure, and makes few alterations in the substantive provisions of the law, is part of a scheme intended to secure essential uniformity in the administration of the Departments subject to the control of the Commissioner, the Post and Telegraph Department, and the Government Railways Department.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,
18th November, 1927.

Right Hon. Mr. Coates.

PUBLIC SERVICE AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Governor-General in Council may revoke declaration excluding any office or officer from operation of principal Act.</p> <p>3. Section 5 of principal Act (as to deputy officers) amended.</p> <p>4. Section 6 of principal Act amended.</p> <p>5. Section 29 of principal Act (as to regrading of positions on account of increased work) amended.</p> <p><i>As to New Appointments to the Public Service.</i></p> <p>6. Persons eligible for appointment to Public Service. Section 40 of principal Act consequentially amended.</p> <p>7. Section 39 of principal Act (as to appointments on probation) amended.</p> <p><i>As to Promotions and Transfers within the Public Service.</i></p> <p>8. Positions may be filled by transfer of persons already in Public Service.</p> <p>9. Appointment by transfer to be provisional.</p> <p>10. Provisional appointment may be at any time cancelled by Commissioner.</p>	<p><i>Complaints and Charges against Officers.</i></p> <p>11. Complaints and charges against subordinate officers.</p> <p>12. Commissioner may institute inquiries as to conduct of permanent head or other officer without a formal charge or complaint.</p> <p><i>Constitution and Procedure of Appeal Board, and Rights of Appeal.</i></p> <p>13. Constitution of Board of Appeal.</p> <p>14. Special provisions with respect to elective members of Board of Appeal.</p> <p>15. Deputies of appointed members of Board of Appeal.</p> <p>16. Member of Board not to act in any appeal affecting himself or an officer of his own Department.</p> <p>17. Right of appeal from decisions of Commissioner.</p> <p>18. Offence to attempt to influence Board of Appeal or any member thereof.</p> <p><i>Consequential Amendments of Principal Act.</i></p> <p>19. Consequential amendments of principal Act.</p>
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A BILL INTITULED

AN ACT to amend the Public Service Act, 1912.

Title.

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

5 follows :—

1. This Act may be cited as the Public Service Amendment Act, 1927, and shall be read together with and deemed part of the Public Service Act, 1912 (hereinafter referred to as the principal Act).

Short Title.

2. (1) The Governor-General in Council may at any time, on the recommendation of and for special reasons assigned by the Commissioner, revoke wholly or in part any declaration heretofore made or that may hereafter be made by him, pursuant to section four of the principal Act, excluding any office or officer or class of officers from the operation of the principal Act.

Governor-General in Council may revoke declaration excluding any office or officer from operation of principal Act.

(2) Forthwith after the taking effect of any revocation made under this section, the Commissioner shall proceed to grade the officer or officers affected thereby.

(3) Any person employed in the Public Service, as defined by section three of the principal Act, shall be eligible for appointment to any position under the control of the Commissioner as if he were subject to such control, notwithstanding that by virtue of section four of the principal Act or of any order made by the Governor-General in Council thereunder, or by virtue of any provision in any other Act, he is not under the control of the Commissioner. Any such person, on appointment to a position under the control of the Commissioner, shall become subject to such control in respect of that position.

Section 5 of principal Act (as to deputy officers) amended.

3. Section five of the principal Act is hereby amended by adding the following as subsection two thereof:—

“(2) The fact that any officer, by direction of the Commissioner, purports to perform or exercise any duty, obligation, right, or power as aforesaid shall be conclusive evidence of his authority so to do, and no person shall be concerned to inquire whether or not the occasion has arisen authorizing or requiring him so to do.”

Section 6 of principal Act amended.

4. Section six of the principal Act is hereby amended by adding thereto the following subsection:—

“(4) Nothing in this section shall be so construed as to prohibit any person from giving information or advice or making representations in respect of any appointment, promotion, or increase of salary at the request or invitation of the Commissioner.”

Section 29 of principal Act (as to regrading of positions on account of increased work) amended.

5. Section twenty-nine of the principal Act is hereby amended by adding thereto the following subsection:—

“(3) There shall be no right of appeal from the determination of the Commissioner not to alter the grading of an office or work in accordance with the provisions of this section, nor shall there be a right of appeal from the new grading if in any case the Commissioner decides to alter the grading. If the Commissioner alters the grading of any office or work under this section, and assigns such office or work to the officer previously employed therein, any other officer shall have the same right of appeal as in the case of an appointment to a position for which applications have not been called.”

As to New Appointments to the Public Service.

Persons eligible for appointment to Public Service.

6. (1) Subject to the provisions of the principal Act, every person shall be eligible for appointment to the Public Service who, in accordance with the prescribed conditions, has passed a competitive examination conducted for the purpose of testing the efficiency of candidates for appointment to the Public Service, or who has passed such other examination as the Commissioner may recognize as being equivalent or superior to the first-mentioned examination.

(2) Subject to the provisions of the principal Act, any person, other than a person to whom the *last preceding* subsection is applicable, may be appointed to any position in the Public Service if in the opinion of the Commissioner no officer then in the Public Service and available for appointment to that position is fully qualified for appointment to the position and capable of efficiently carrying out the duties thereof.

(3) In any special case to which neither of the *two last preceding* subsections is applicable, and notwithstanding any restrictions with respect to appointments imposed by the principal Act, the Commissioner may appoint any person to a position in the Public Service if in his
 5 opinion it is desirable in the public interest so to do :

Provided that no person shall be appointed to a position under this section unless the Commissioner is of opinion that no person then in the Public Service and available for appointment to that position is fully qualified for appointment to the position and capable of efficiently
 10 carrying out the duties thereof.

(4) Every appointment made under the *last preceding* subsection, with the Commissioner's reasons for making the same, shall be expressly referred to in the next annual report made by the Commissioner thereafter, pursuant to section fifteen of the principal Act.

15 (5) Section forty of the principal Act is hereby consequentially amended as follows:—

Section 40 of principal Act consequentially amended.

(a) By omitting from subsection two all words after the words "such an appointment is required":

(b) By repealing subsection three.

20 7. Section thirty-nine of the principal Act is hereby amended,—

Section 39 of principal Act (as to appointments on probation) amended.

(a) By inserting, after the words "six months," the words "but may be dispensed with at any time during that period":

(b) By adding at the end of the section the words "or may from
 25 time to time extend the period of probation, but confirmation of the appointment shall not be presumed by reason only of the fact that the person concerned has been continued in the Public Service after the expiration of any period of probation."

As to Promotions and Transfers within the Public Service.

30 8. (1) Whenever a vacancy occurs in any position within the Public Service, or if a new position is created therein, the Commissioner may, in accordance with the provisions of this section, transfer to that position from any other position an officer then in the Public Service. For the purposes of this section a person to whom subsection *three* of
 35 section *two* of this Act is applicable shall be deemed to be an officer of the Public Service, but, unless subject to the control of the Commissioner, shall not be entitled to any right of appeal against a determination of the Commissioner.

Positions may be filled by transfer of persons already in Public Service.

(2) The Commissioner shall, whenever practicable, notify, by official
 40 circular or otherwise, all vacancies in the Public Service, the filling of which by the transfer of any qualified officers then in the Service would result in their promotion. Any notification given under this section in respect of a vacancy in any position may invite applications to be made in respect of any consequential vacancy that may be created by the
 45 filling of the the first-mentioned vacancy, and in any such case it shall not be necessary to give further notification of any such vacancy as it arises. Where applicants for any position require to be possessed of special qualifications, a notification under this section with respect to that position may be restricted to officers of the Department in which
 50 the vacancy has occurred and to the officers of any other Department where similar qualifications are required.

(3) Notwithstanding anything in the *last preceding* subsection, the Commissioner may in any case fill any vacancy without having notified the same if he is of opinion that an appointment should be forthwith made.

(4) In the event of two or more officers being applicants for the same position, preference shall be given to that officer who, in the opinion of the Commissioner, is the most efficient and suitable for appointment to the position. 5

(5) In the event of two or more officers being equally efficient and suitable, the decision of the Commissioner shall be determined by reference to the seniority of the officers concerned in respect of their classification. 10

(6) For the purposes of this section the relative efficiency of two or more officers shall be determined by reference to their special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit, diligence, and good conduct. 15

(7) Every appointment made under this section shall be duly notified by the Commissioner, by official circular or otherwise, and, subject to the provisions of section *seventeen* hereof, any officer for whom such appointment would have involved promotion may appeal therefrom. 20

Appointment by transfer to be provisional.

9. (1) Every appointment made by way of transfer under the *last preceding* section, and involving the promotion of the officer transferred, shall be provisional, and shall not be confirmed unless and until all appeals therefrom have been duly determined and have been disallowed, or, if no appeals are made, until the time allowed for the making of such appeals has expired. 25

(2) If any appeal against any such appointment is allowed, the Commissioner shall forthwith appoint the successful appellant to the position, and shall cancel the provisional appointment. 30

Provisional appointment may be at any time cancelled by Commissioner.

10. Notwithstanding anything in the foregoing provisions, the Commissioner may at any time cancel a provisional appointment, whether or not an appeal against such appointment has been made, if, in his opinion, the office is not required, or can be suitably filled by the transfer, without promotion, of any other officer, or that further notification of the position is desirable, or for other sufficient reason. 35

Complaints and Charges against Officers.

Complaints and charges against subordinate officers.

11. (1) The provisions of this section as to complaints and charges against officers, and the penalties or other consequences thereof, shall apply with respect to any officer who— 40

- (a) By any act or omission fails to comply with any of the requirements of the principal Act; or
- (b) In the course of his duties disobeys, disregards, or makes wilful default in carrying out any lawful order given by any person having authority to give such order, or by word or conduct displays insubordination; or 45
- (c) Is negligent, careless, or indolent in the discharge of his duties; or
- (d) Is inefficient or incompetent in the discharge of his duties, his inefficiency or incompetency appearing to result from causes within his own control; or 50

(e) Is not qualified, either temperamentally or otherwise, for the efficient and satisfactory performance of the duties of his office; or

(f) Uses intoxicating liquors or drugs to excess; or

(g) Is guilty of any disgraceful or improper conduct, or of any act or conduct, either in his official capacity or otherwise, showing his unfitness to remain in the Public Service; or

(h) Otherwise than in the discharge of his duties, or except by the direction or with the permission of the Minister administering the Department to which he is attached, directly or indirectly discloses any information acquired by him in the course of his duties or otherwise in his capacity as an officer of the Public Service.

(2) If the permanent head of any Department receives or makes a minor complaint against any officer, or has reason to believe that any officer has committed what in the opinion of the permanent head is a minor offence, he may require the officer to furnish an explanation, and if, after consideration of such explanation, he is satisfied that the subject-matter of the complaint, or charge is proved, he may caution or reprimand the officer, or may order that a sum not exceeding *two* pounds be deducted from his salary. Any action taken under this subsection by the permanent head shall be forthwith reported to the Commissioner who, in cases where a deduction from salary has been ordered, shall confirm the decision of the permanent head, or shall reduce or remit the penalty as he thinks proper. The decision of the Commissioner with respect to any such penalty shall be final.

(3) Where a complaint or charge of a more serious nature than is provided for in the *last preceding* subsection is made against any officer (not being the permanent head of a Department), the following provisions shall apply:—

(a) The officer concerned shall be forthwith furnished by the permanent head with a copy of the complaint or charge, and shall, by notice in writing, be required to state in writing, within a reasonable time to be specified in the notice, whether he admits or denies the truth of the complaint or charge, and shall also be required to give to the permanent head, in writing, such explanation as he may wish to give with respect to the subject-matter of the complaint or charge. If a denial of the complaint or charge is not made within the required time, the officer shall be deemed to have admitted the truth thereof.

(b) The permanent head shall forthwith forward to the Commissioner the complaint or charge, and the replies thereto, together with his own report on the matter and such other reports as he may have obtained, and the Commissioner shall thereupon proceed to consider and determine the matter.

(c) If the truth of the complaint or charge is admitted by the officer concerned, or if the Commissioner, after consideration of the reports relating to the complaint or charge and any reply or explanation furnished by the officer, and after such further investigation or inquiry (if any) as he deems necessary, is

satisfied as to the truth of the complaint or charge, he may, subject to any right of appeal conferred on the officer by this Act—

(i) Caution or reprimand the officer, or deprive him of his annual or other leave of absence during or in respect of a specified period ; or 5

(ii) Order to be deducted by way of penalty from the salary of such officer such sum as he deems fit ; or

(iii) Make a reduction in the classification and rate of salary of the officer, or in either such classification or rate of salary ; or 10

(iv) Transfer the officer to some other office or locality, which transfer may be in addition to any other lawful penalty ; or

(v) Dismiss the officer from the Public Service or require him to resign within a specified time (in which case the officer shall be deemed to be dismissed unless he so resigns). 15

(d) If the Commissioner is of opinion that the complaint or charge should be investigated by some person or persons specially appointed for the purpose, he may, by writing under his hand, make such appointment ; and every person so appointed shall have the same powers as the Commissioner to summon and examine upon oath any witness whose evidence may be deemed necessary or material, and shall, after fully hearing the case, report to the Commissioner his opinion thereon and forward to the Commissioner with his report a copy of all evidence received by him. 20 25

(e) As soon as practicable after the conclusion of any investigation or inquiry under this section, the Commissioner shall, by notice in writing, inform the officer concerned of the result thereof, and of the penalty (if any) imposed by him. 30

(4) Any officer against whom a complaint or charge is made under this section may, pending the hearing and determination of such complaint or charge, be suspended by the permanent head, or, in emergent cases, by the officer who, under the permanent head, is responsible for the proper discharge of his duties. 35

(5) Every suspension under the *last preceding* subsection shall be forthwith reported to the Commissioner, and any such suspension may be removed only by the Commissioner.

(6) Except with the express approval in writing of the Commissioner, no person who has been suspended under the foregoing provisions of this section shall be entitled to receive any salary or payment in respect of the period of suspension if the charge or complaint made against him is sustained on inquiry or investigation as hereinbefore provided. 40 45

(7) At any inquiry or investigation held under this section with respect to any complaint or charge made against an officer, such officer shall be entitled to be represented by counsel or agent.

Commissioner may institute inquiries as to conduct of permanent head or other officer without a formal charge or complaint.

12. If in any case the Commissioner is of opinion that the conduct of any officer (including a permanent head) should be made the subject-matter of inquiry, he may, notwithstanding that a formal complaint or charge has not been made against such officer, institute such inquiry, and in any such case the provisions of the *last preceding* 50

section shall, with the necessary modifications, apply, references in that section to the permanent head being, where necessary for the purposes of this section, construed as references to the Commissioner.

Constitution and Procedure of Appeal Board, and Rights of Appeal.

- 5 13. (1) The Board of Appeal established under the principal Act shall hereafter be constituted as follows :—
- Constitution of
Board of Appeal.
- (a) Two persons, of whom at least one shall be an officer of the Public Service, to be appointed by the Governor-General, and to hold office for a term not exceeding three years :
- 10 (b) Two persons, being officers of the Public Service employed in different Departments, to be elected by the officers of the Public Service in the manner hereinafter prescribed.
- (2) One of the members appointed by the Governor-General pursuant to paragraph (a) of the *last preceding* subsection shall be
- 15 appointed by him as the Chairman of the Board.
- (3) The persons elected in accordance with the provisions of paragraph (b) of the *last preceding* subsection shall not be entitled to sit as members of the Board of Appeal at the same time, and shall
- 20 mutually agree as to which of them shall act as a member of the said Board in any particular appeal. In default of such agreement, the person so to act shall be determined in the manner prescribed by regulations.
14. With respect to the elective members of the Board of Appeal, the following provisions shall apply :—
- Special provisions
with respect to
elective members of
Board of Appeal.
- 25 (a) The members of the Board holding office at the time of the passing of this Act shall continue to hold office for the remainder of the term for which they were elected, and an election by ballot shall be held not later than the second Monday in May, nineteen hundred and twenty-eight, and
- 30 during the month of May in every third year thereafter, to determine the officers who shall be the elected members of the Board of Appeal for each successive triennial period.
- (b) The Commissioner shall make regulations prescribing the manner in which ballots shall be taken, and if any question
- 35 or dispute arises as to the regularity or validity of any ballot, or the voting thereat, such question or dispute shall be determined by the Commissioner in such manner as he thinks fit, and his decision shall be final.
- (c) Notice of the election of each such member of the Board of
- 40 Appeal shall be gazetted.
- (d) If at any election under this section two officers employed in the same Department receive a greater number of votes
- 45 than any officer of another Department, the only officer receiving the highest number of votes shall be deemed to be elected. If the officers of the first-mentioned Department receive an equal number of votes, the Returning Officer appointed in accordance with regulations to conduct the election shall determine which of them shall be deemed
- 50 to have been elected as a member of the Board. If at any election as aforesaid only one member of the Board is duly elected, a further election shall, as soon as

practicable thereafter, be held for the election of the other elective member.

- (e) If any elected member of the Board dies, or by notice in writing addressed to the Commissioner resigns his office or ceases to be a member of the Public Service, or refuses or neglects without sufficient cause to attend any duly appointed meeting of the Board, or becomes employed in the Department in which the other elected member is employed, then and in any such case his seat shall become vacant and another officer shall be elected by ballot in the prescribed manner, who shall hold office for the residue of the period during which his predecessor would have held the same if he had remained a member of the Board. 5 10
- (f) Until an election of members of the Board of Appeal is complete, the members holding office at the time of such election shall continue to hold office. 15

Deputies of appointed members of Board of Appeal.

15. (1) The Commissioner shall from time to time as occasion may arise appoint a fit person to be the deputy of any member other than an elected member of the Board of Appeal.

(2) Such deputy member shall act for the member whose place he takes whenever— 20

- (a) Such member dies; or
- (b) By notice in writing addressed to the Commissioner resigns his office; or
- (c) Fails to attend a duly appointed sitting of the Board of Appeal; 25 or
- (d) By notice in writing addressed to the Commissioner intimates that he is unable, from any cause, to act as a member of such Board; or
- (e) From any cause whatever is not available as a member of such Board; or 30
- (f) From any cause whatever it is not desirable that he should act as a member of such Board.

(3) When a deputy member is called on to act in consequence of either of the contingencies set out in paragraphs (a) and (b) of the *last preceding* subsection, he shall continue to act until another member has been duly appointed and has entered upon the duties of his office. 35

(4) When such deputy member is called on to act in consequence of any of the contingencies set out in paragraphs (c), (d), (e), and (f) of the *last preceding* subsection, he shall continue to act for such time as shall be designated by the Commissioner. 40

Member of Board not to act in any appeal affecting himself or an officer of his own Department.

16. (1) No member shall act on the Board of Appeal in any appeal affecting an officer of the Department in which such member is an officer. 45

(2) No member shall act as a member of the Board of Appeal in an appeal affecting himself.

(3) In the event of both elected members of the Board of Appeal or officers of both the Departments in which such members are employed being affected by the same appeal, or in the event of the incapacity of either of the elected members of the Board of Appeal by reason of illness, absence, or any other cause, an officer of the Public Service, to be selected in manner prescribed by regulations in that behalf shall 50

act in place of the elected member of the Board at the hearing of such appeal, and such officer shall, for the purposes of this Act, be deemed to be the duly elected member of the Board of Appeal for the hearing of such appeal.

5 17. (1) Every officer shall have a right of appeal in accordance with this section against—

Right of appeal from decisions of Commissioner.

(a) Any determination of the Commissioner made pursuant to section seventeen of the principal Act fixing the maximum salary payable in respect of any position in the Professional or Clerical Division, or relating to the grading of any officer of any other division; or

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(b) Any determination of the Commissioner in respect of an application made by such officer for promotion by means of appointment to any office or position for which applications have been called; or

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(c) Any appointment made by the Commissioner pursuant to subsection three of section eight hereof without having notified the vacancy or called for applications to fill the same if his appointment to fill such vacancy would have involved the promotion of the appellant; or

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(d) Any determination of the Commissioner in respect of a charge made against such officer of having committed any offence in relation to his official duties; or

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(e) Any penalty imposed on such officer by the Commissioner in respect of any offence as aforesaid, except in cases where it is expressly provided that the decision of the Commissioner shall be final; or

(f) Any other determination in respect of which a right of appeal is expressly conferred by the principal Act or any other Act.

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(2) Notice of appeal against any determination of the Commissioner, and of the grounds of such appeal, shall be forwarded to the Commissioner in writing within *twenty-one* days after such determination has been notified to the officer concerned, or within such extended time as the Commissioner may in any case allow.

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(3) The Board of Appeal shall have jurisdiction to hear and determine such appeal, and for this purpose to summon and examine witnesses on oath or otherwise. On any such appeal the Board may receive such evidence as it thinks fit, whether such evidence would be legally admissible in other proceedings or not.

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(4) In any proceedings under this section the decision of the Board of Appeal shall be final, and no writ of mandamus, prohibition, or certiorari shall lie in respect thereof to any Court.

(5) In the event of the Board of Appeal allowing an appeal with respect to the grading of an officer the Commissioner may declare the office held by that officer to be vacant, and may fill such vacant position as hereinbefore in this Act provided.

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(6) If in the opinion of the Board any appeal under this section is frivolous or vexatious, or one that should not have been made, the Board may order the appellant to pay the cost of the appeal, and the sum so ordered to be paid shall be recoverable in the manner prescribed for the recovery of fines for breaches of regulations.

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Offence to attempt to influence Board of Appeal or any member thereof.

18. (1) No person shall in any way attempt to influence the Board of Appeal or any member of such Board in respect of the appeal of any officer.

(2) Any person who commits a breach of the provisions of this section shall be guilty of an offence punishable on summary conviction by a fine not exceeding *fifty* pounds. 5

(3) Any officer on conviction of such an offence shall, in addition to any other penalty, be liable to immediate dismissal.

(4) Nothing in this section shall be so construed as to prohibit any person from giving information or making representations in respect of any appeal at the request or invitation of the Commissioner or the Board of Appeal, or as a witness or the representative of an appellant before the Board of Appeal. 10

Consequential Amendments of Principal Act.

Consequential amendments of principal Act.

19. The principal Act is hereby consequentially amended as follows:— 15

- (a) By omitting from subsection two of section twenty-two all words after the words "determined by the Commissioner":
- (b) By repealing the proviso to section twenty-eight thereof:
- (c) By repealing sections thirty-one, thirty-two, and thirty-three thereof: 20
- (d) By omitting from subsection one of section thirty-six all words after the words "subject of His Majesty":
- (e) By repealing sections forty-six, forty-seven, and forty-eight thereof: 25
- (f) By repealing sections fifty-two, fifty-three, and fifty-four thereof:
- (g) By repealing subsection two of section fifty-five thereof:
- (h) By repealing section fifty-six thereof.