

## PUBLIC SERVICE AMENDMENT BILL

### EXPLANATORY NOTE

*Clause 2* of this Bill amends the constitution of the Public Service Commission so as to provide that it shall consist of not more than three members, to be appointed by the Governor-General in Council on the recommendation of the Prime Minister. The direct representation of the Public Service Association (Incorporated) on the Commission is abolished, and the present representative (whose five year term expired on 31 October 1951) will vacate his office on the passing of the Bill. *Subclause (2)* provides for the appointment of deputies to act for members of the Commission in the event of their incapacity.

*Clause 3* provides for the fixing of the salaries of the Chairman and members of the Public Service Commission by the annual estimates, instead of by Act of Parliament.

*Clause 4* replaces section 12 of the Public Service Amendment Act 1946, as to the persons eligible for appointment to the Public Service, with modifications designed to recognize the power of the Commission to prescribe educational qualifications (in view of the abolition of the Public Service Examination), and also to make it clear that probationers are eligible in the same way as persons outside the Service for appointment to positions in the Service. *Subclause (4)* makes it clear that an appeal will lie against an appointment made under this clause without calling for applications. Where applications are called for, an appeal will lie under paragraph (b) of section 17 (1) of the 1927 Act.

*Clause 5* makes it clear that (except as expressly provided or as determined by the Commission) the appointment of every person to the Public Service is to be on probation. The period of probation is to be specified by the Commission and is not to exceed two years, but this period may be extended by the Commission for not more than a year at a time, and unless the appointment is sooner confirmed by the Commission in writing, probation is to continue for six months after the expiration of the specified period or extended period. The confirmation may be made retrospectively.

*Clause 6* authorizes the Public Service Commission to authorize the temporary employment of any persons whenever it considers that the public interest so requires, and to dispense with the services of temporary employees at any time.

*Clause 7* empowers the Public Service Commission to transfer any employee in the Public Service from one Department to another or from one place to another (the latter place being in New Zealand) if in the opinion of the Commission the transfer is necessary in the interests of national security. There is to be no appeal against any such transfer, but the employee is to be entitled to receive a written statement setting out the reasons for the transfer as fully as they may be properly disclosed, and he may have the decision reviewed by a Review Authority consisting of three persons appointed by the Governor-General. If the Review Authority modifies or revokes the decision the employee is to be entitled to a certificate to that effect, but the power of the Commission to transfer him under any other provision is not to be affected.

*Clause 8* confers a right of appeal to the Public Service Board of Appeal in the case of any proposal to transfer a public servant from New Zealand to any place outside New Zealand.

*Clause 9* gives a right of appeal against compulsory transfer to any officer if leave to appeal is granted by the Chairman of the Board of Appeal on the ground of extraordinary hardship.

*Clause 10* makes it mandatory for the Commission to declare a position vacant if it is regraded by the Board of Appeal. This will make the appointment of the appellant or any other officer subject to appeal.

*Clause 11* provides that any service organization is entitled at all times to make representations to the Commission, and that the Commission is to have due regard to all such representations.

*Clause 12* repeals the provision requiring the gazetting of an annual list of officers and the keeping of records. Records will continue to be kept by the Commission, and the annual list will be published separately from the *Gazette*, as in the case of the Government Railways Department.

*Clause 13* abolishes the requirement for gazetting notice of every appointment, promotion, transfer, retirement removal, and dismissal of officers, and provides instead that appointments and promotions shall be notified by official circular, which is the present practice. The clause also abolishes the right of an officer to receive a warrant of appointment under the hand of the Governor-General.

Hon. Mr. Webb

## PUBLIC SERVICE AMENDMENT

### ANALYSIS

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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:—

1. This Act may be cited as the Public Service Amendment Act 1951, and shall be read together with and deemed part of the Public Service Act 1912 (hereinafter referred to as the principal Act).

Short Title.

See Reprint of Statutes, Vol. VII, p. 522

*The Public Service Commission*

Constitution  
of Commission.  
1946, No. 42

2. (1) Section three of the Public Service Amendment Act 1946 is hereby amended by repealing subsection two, and substituting the following subsection:—

“ (2) The Commission shall consist of not more than three persons, who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister.” 5

(2) The said section three is hereby further amended by repealing subsection seven, and substituting the following subsection:— 10

“ (7) In the event of the incapacity of any member of the Commission 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 that member during his incapacity, and any such deputy shall, while he acts as such, be deemed for all purposes to be a member of the Commission. No appointment of a deputy, and no acts done by a deputy as such, and no acts done by the Commission while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.” 15 20

(3) Section seven of the Public Service Amendment Act 1946 is hereby amended by inserting in subsection three, before the words “ shall also have a casting vote ”, the words “ except when there are only two members of the Commission in office ”. 25

(4) The person holding office immediately before the passing of this Act as a member of the Commission appointed on the nomination of the New Zealand Public Service Association (Incorporated) shall vacate his office on the passing of this Act. 30

Salaries of  
members of  
Commission.

3. (1) The Public Service Amendment Act 1946 is hereby amended by repealing section four, and substituting the following section:— 35

“ 4. The Chairman of the Commission and each other member of the Commission shall be paid such salaries as may from time to time be appropriated by Parliament.” 40

(2) This section shall come into force upon the first appropriation by Parliament of salaries for the Chairman and other members of the Commission.

*Appointments to the Public Service*

4. (1) Subject to the provisions of the principal Act, every person shall be eligible for appointment to the Public Service who has passed such examination or

5 possesses such other educational qualifications as may be accepted as sufficient by the Commission in accordance with regulations made under the principal Act.

Persons eligible for appointment.

(2) Subject to the provisions of the principal Act, any person who is not an officer (whether or not he is a

10 probationer) may be appointed to any position in the Public Service if in the opinion of the Commission no officer for the time being in the Public Service and available for appointment to that position is fully qualified for appointment to the position and capable

15 of efficiently carrying out the duties thereof.

(3) In any special case to which the *last preceding* subsection does not apply, and notwithstanding any restrictions with respect to appointments imposed by the principal Act, the Commission may appoint any person

20 who is not an officer (whether or not he is a probationer) to a position in the Public Service if in the opinion of the Commission it is desirable in the public interest to do so:

Provided that no person shall be appointed to a position under this subsection unless, in the opinion of

25 the Commission, the person appointed is in a great degree more suitable and capable than any officer for the time being in the Public Service and available for appointment to the position.

(4) Section seventeen of the Public Service Amendment Act 1927 is hereby amended by omitting from

30 paragraph (c) of subsection one the words " pursuant to subsection three of section eight hereof "

See Reprint of Statutes, Vol. VII, p. 557

(5) This section is in substitution for section twelve of the Public Service Amendment Act 1946, and that

35 section is hereby accordingly repealed.

Repeal. 1946, No. 42

5. (1) The principal Act is hereby amended by repealing section thirty-nine, and substituting the following section:—

Appointments to be on probation only.

" 39. (1) Except as otherwise expressly provided in

40 this Act or in any other Act or as determined by the Commission, every person who is first appointed to the Public Service in a permanent capacity and every person who, having ceased to be employed in the Public Service,

is again appointed thereto in a permanent capacity shall be on probation for such period, not exceeding two years, as the Commission specifies either generally or in any particular case or class of cases.

“ (2) The Commission may from time to time extend the period of probation of any probationer for a specified period not exceeding twelve months at any one time, by notice in writing to the probationer. 5

“ (3) The Commission may at any time, in writing, confirm or annul the appointment to the Public Service of any probationer. 10

“ (4) Every such confirmation shall take effect on the date of the instrument of confirmation, or, as the case may be, on such earlier or later day as may be specified in that behalf in the instrument. 15

“ (5) Notwithstanding that the period of probation of any probationer may have expired, and whether or not he is appointed to any other position in the Public Service, he shall, while he remains in the Public Service, be deemed to be employed on probation until his appointment to the Public Service is confirmed or annulled under this section: 20

“ Provided that, if, at the end of six months after the expiration of his period of probation (including every extension thereof), he is still deemed under the foregoing provisions of this subsection to be employed on probation, his appointment to the Public Service shall thereupon be deemed to be confirmed under this section.” 25

Repeals.  
See Reprint  
of Statutes,  
Vol. VII, p. 550

(2) Sections forty-three and forty-four of the principal Act and section seven of the Public Service Amendment Act 1927 are hereby repealed. 30

(3) Section three of the principal Act is hereby amended by omitting from the definition of the term “ officer ” the words “ sections thirty-nine, forty-three, or forty-four ”, and substituting the words “ section thirty-nine ”. 35

#### *Temporary Employees*

Appointment  
of temporary  
employees.

6. (1) The Commission may, where it considers that the public interest so requires, authorize the temporary employment of any person or class of persons. 40

(2) The services of any person employed temporarily may be dispensed with at any time by the Commission.

(3) This section is in substitution for section forty-five of the principal Act, and that section and the Temporary Employees Act 1913 are hereby accordingly repealed.

Repeals.  
1913, No. 50

*Transfers*

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7. (1) Notwithstanding anything to the contrary in the principal Act or in any other Act, the Commission may transfer any employee from one Department to another or from one place in or outside New Zealand to another place being within New Zealand, without promotion or reduction in salary or seniority, if in the opinion of the Commission the transfer is necessary in the interests of national security.

Commission may transfer employees where necessary in interests of national security.

(2) A statement by the Commission that any transfer has been made under this section shall be conclusive evidence that the transfer is in the opinion of the Commission necessary in the interests of national security.

(3) In the case of any transfer under this section the officer concerned shall be entitled to receive a statement in writing setting out the reasons for the transfer as fully as they may, in the opinion of the Commission, be properly disclosed, having regard to the interests of national security. Section eleven of the Public Service Amendment Act 1927 shall not apply in the case of any transfer under this section.

See Reprint of Statutes, Vol. VII, p. 551

(4) No appeal to the Board of Appeal shall lie against any determination of the Commission to transfer any employee under this section, but the employee may apply for a review of the determination by forwarding an application in writing to the Commission within twenty-one days after the determination has been notified to the employee, or within such extended time as the Commission may in any case allow.

(5) Every application so made shall be referred to a Review Authority, whereupon the Review Authority, after making full inquiry, shall report to the Commission whether in its opinion the determination should be confirmed, modified, or revoked, and the Commission shall be guided accordingly.

(6) Where the Review Authority reports that any determination to transfer any employee under this section should be modified or revoked, the employee shall be entitled to receive a certificate to that effect signed by or on behalf of the Review Authority.

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(7) This section is in addition to and not in derogation of any other provisions of the principal Act (including its amendments) conferring power on the Commission to transfer officers or employees; and any such power (including the general power of transfer under section fifty of the principal Act without assigning any reason where no complaint or charge is made) may be exercised notwithstanding anything in this section and notwithstanding anything relating to the officer concerned in any report or certificate of the Appeal Authority under this section. 5 10

(8) The Review Authority shall consist of three persons to be appointed by the Governor-General on the recommendation of the Prime Minister and to hold office during the pleasure of the Governor-General. 15

(9) The Review Authority shall, for the purposes of any such application, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908 and, subject to this section, the provisions of that Act shall apply accordingly. 20

(10) The procedure of the Review Authority shall in all respects be absolutely in the discretion of the Authority, and the Authority shall not be bound to proceed with the inquiry in any formal manner, or formally to sit as a tribunal. The Authority may admit and accept such evidence as it thinks fit, whether admissible in a Court of law or not. 25

(11) The employee shall be afforded an opportunity to make representations to the Review Authority personally or by a barrister or solicitor or other person, and to adduce any evidence deemed by the Authority to be relevant and not contrary to the interests of national security; but the employee or any other person shall not be entitled otherwise to be present at the proceedings or be entitled to be informed of any representations or evidence received by the Authority or of the reasons for the decision of the Authority. 30 35

(12) The decisions of the Review Authority shall be final, and no writ of mandamus, prohibition, or certiorari shall lie in respect thereof to any Court. 40

(13) Except with the consent of the Prime Minister or the Review Authority, no report or account of any application, evidence, or proceedings before the Authority, or of any decision of the Authority, shall be published in any newspaper or other document. Every 45



person who publishes or causes to be published any report or account in contravention of this subsection commits an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

5 8. Section seventeen of the Public Service Amendment Act 1927 is hereby amended by inserting in subsection one, after after paragraph (e), the following paragraph:—

Appeal by officers against transfer out of New Zealand.

See Reprint of Statutes, Vol. VII, p. 557

10 “(ee) Any determination of the Commission to transfer such officer from any place in New Zealand to any place outside New Zealand; or ”.

15 9. (1) Where the Commission determines to transfer any officer from one Department to another or from one place to another in any case to which sections seven and eight of this Act do not apply, the officer may, within twenty-one days after the determination has been notified to him, forward an application in writing to the Chairman of the Board of Appeal established under the principal Act for leave to appeal against the determination on the ground of extraordinary hardship; and if in any such case the Chairman grants that leave the officer shall have a right of appeal against the determination in accordance with section seventeen of the Public Service Amendment Act 1927.

Leave to appeal against transfer.

25 (2) The period allowed for forwarding notice of appeal shall in the case of an appeal under this section be within seven days after the leave to appeal has been notified to the officer concerned, or within such extended time as the Commission may in any case allow.

30 (3) The fact that an application for leave to appeal has been made or that an appeal is pending under this section shall not relieve the officer concerned of his obligation to comply with the determination of the Commission pending a decision on the application or appeal.

Miscellaneous

40 10. Section seventeen of the Public Service Amendment Act 1927 is hereby amended by omitting from subsection five the words “ may declare the office ”, and substituting the words “ shall declare the position ”.

Appeal against appointment to regraded position.

Representations  
to Commission  
by service  
organizations.

**11.** Section six of the principal Act (as amended by section four of the Public Service Amendment Act 1927) is hereby further amended by adding the following subsection:—

“(5) Notwithstanding anything in this section, any organization representing employees of the Public Service or any class or classes thereof shall be entitled at all times to make representations to the Commission on any matter affecting the conditions of employment of any employee or class of employees, and in arriving at any decision the Commission shall have due regard to all such representations in addition to any other considerations that the Commission deems relevant.”

Repeal.

**12.** Section twenty-eight of the principal Act is hereby repealed.

Notice of  
appointments  
and promotions.

**13.** Section sixty of the principal Act is hereby amended by repealing subsection four, and also by repealing subsection one, and substituting the following subsection:—

“(1) Every appointment of any person to be an officer or probationer and every promotion of an officer or probationer shall be notified by official circular.”