

STATE SERVICES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the State Services Act 1962.

Clause 1 relates to the Short Title.

Clause 2 inserts a new section dealing with the reappointment to the Public Service of officers who, following resignation from the Public Service, have been caring for one or more pre-school children. There will be a right of appeal against the appointment of such an officer only if the appointment involves a change in duties or promotion or is not to the same Department as that in which the person was employed at the time of resignation.

Clause 3 enables a retired employee of the New Zealand Public Service Association (Incorporated) to be appointed as a member (but not as the Chairman or the official member) of a Classification and Grading Committee. Such a member must at present be an officer or a retired officer of the Public Service.

Clause 4 repeals, as redundant, section 51 of the principal Act (which deals with allowances for adult and married employees). The matters dealt with in this section have customarily been dealt with entirely under the State Services Conditions of Employment Act 1977 and its predecessor.

Clause 5 amends section 60 of the principal Act. This section relates to the forfeiture of office by an employee who is absent from duty without permission for a period of not less than 4 weeks. At present an employee does not forfeit office, even though absent for 4 weeks or more, unless—

- (a) Notice of the effect of section 60 has been sent to him by registered letter; and
- (b) At least 1 week has passed since the date on which the notice was sent.

The amendments made by this clause make it clear—

- (a) That the time for sending the notice of the effect of section 60 is during the period of absence from duty (but not sooner than 14 days after the first day of such absence); and
- (b) That the absentee will not be deemed to have 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 sent or the expiration of 4 weeks absence from duty, whichever is the later.

Clause 6 enables retired employees of the New Zealand Public Service Association (Incorporated) to be appointed as service members of the Public Service Appeal Board. At present service members are obliged to be officers or retired officers of the Public Service.

Clause 7: Subclause (1) relates to the onus of proof in appeals under section 64 of the principal Act. The onus of proof rests on the appellant except in those cases where, by the proviso to section 64 (7) of the principal Act, that onus is placed on the State Services Commission. The amendments effected by this subclause—

- (a) Place the onus of proof (which is at present on the Commission) on the appellant where the appeal is only against the imposition of a penalty under section 55 of the principal Act or only against a decision imposing a penalty, or directing the recovery of an amount, under section 58 of the principal Act; and
- (b) Insert a new subsection (7A) requiring the appellant to commence argument on the merits of any appeal that is only an appeal—
 - (i) Against the penalty imposed by the State Services Commission under section 55 or section 58 of the principal Act; or
 - (ii) Against an amount directed by the Commission to be recovered under section 58 of the principal Act; or
 - (iii) Limited to the matters described in *subparagraphs (i) and (ii)* of this paragraph.

Subclause (2): Section 64 (17) of the principal Act empowers the Appeal Board to impose certain liabilities (with regard to expenses and costs) on the appellant if it is of the opinion that the appeal is one that should not have been made. The amendment made by this clause removes that power. It will still be open to the Appeal Board to impose those liabilities if it is of the opinion that the appeal is frivolous or vexatious.

Clause 8 deals with the situation that arises where the indenture of apprenticeship of a Public Service apprentice is terminated before the term of the apprenticeship is completed. The apprentice ceases to be employed in the Public Service unless the State Services Commission decides to transfer him to other duties. Where an apprentice is so transferred he is to be on probation for a term of 6 months. As with other probationers this term of probation may be extended.

Clause 9: Under section 76 of the principal Act it is an offence to attempt to influence the State Services Commission (or any person to whom the Commission has delegated its powers) with respect to certain decisions affecting individual employees. Subsections (3) and (4) of that section expressly permit certain activities such as making representations at the request or invitation of the Commission. The amendment made by this clause permits those same activities where the relevant body is not the Commission but a person to whom the Commission has delegated its powers.

Clause 10 substitutes a new Third Schedule to the principal Act. This Schedule sets out the offices and positions which are exempt from appeal. Material changes are as follows:

- (a) Inland Revenue Department. The positions exempt from appeal at present are those of the Commissioner and the Chief Deputy Commissioner. The word "Chief" is omitted so that in future the appointment of any Deputy Commissioner will be exempt from appeal.
 - (b) Scientific and Industrial Research. Reference is no longer made to the Deputy Director-General.
 - (c) Trade and Industry. Appointments of Assistant Secretaries are no longer to be exempt from appeal.
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Hon. Mr Gordon

STATE SERVICES AMENDMENT

ANALYSIS

Title	6. Constitution of Appeal Board
1. Short Title	7. Rights of appeal
2. Reappointment after absence for child care purposes	8. Public Service apprentices
3. Classification and Grading Committees	9. Offence to attempt to influence Commission
4. Repeal of redundant provision	10. Offices and positions exempt from appeal Schedules
5. Unauthorised absence	

A BILL INTITULED

An Act to amend the State Services Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 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).

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

15 “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

*Reprinted 1971, Vol. 4, p. 2533
Amendments: 1973, No. 15; 1973, No. 92; 1974, No. 122

- “(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 5
- “(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. 10
- “(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— 15
- “(a) They each meet the requirements of that subsection; and 20
- “(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. 25
- “(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. 30
- “(5) Where the position— 35
- “(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 40

“(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

5 “(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.”

10 (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:

15 “(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
20 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.

25 “(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
30 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
35 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.

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SCHEDULES

FIRST SCHEDULE

Section 10 (1)

NEW THIRD SCHEDULE TO PRINCIPAL ACT

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

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 Guarantee Corporation	General Manager.
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	Director-General. Assistant Director-General.

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FIRST SCHEDULE—*continued*

Department	Office or Position
Inland Revenue	Commissioner. Deputy Commissioner.
Internal Affairs	Secretary. Deputy Secretary.
Justice	Secretary. Deputy Secretary.
Labour	Secretary. Deputy Secretary.
Lands and Survey	Assistant Secretary. 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.