

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 10 December 1985.

Words struck out are shown with black rule at beginning and after last line; words inserted are shown with single rule before first line and after last line.

Hon. Stan Rodger

STATE SERVICES AMENDMENT (NO. 2)

ANALYSIS

Title
1. Short Title
2. Interpretation
3. The Public Service

4. Occupational classes and salary scales
5. Departments of the Public Service
6. Offices and positions exempt from appeal
7. Consequential amendments to Ombudsmen Act 1975

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, as follows:

- 1. Short Title**—This Act may be cited as the State Services Amendment Act (No. 2) 1985, and shall be read together with and deemed part of the State Services Act 1962* (hereinafter referred to as the principal Act).
- 10 **2. Interpretation**—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “permanent head”, the following definition:
- 15 “Permanent staff, in relation to the Public Service, means persons employed as officers or probationers in the Public Service, whether on a full-time basis or on a part-time basis:”.

*R.S. Vol. 14, p. 601
Amendment: 1985, No. 64

3. The Public Service—(1) The principal Act is hereby amended by repealing subsection (2) of section 22 (as amended by section 32 (1) of the Government Life Insurance Corporation Act 1983), and substituting the following subsection:

“(2) Notwithstanding anything to the contrary in subsection (1) of this section, the provisions of Parts III to V of this Act shall not apply to—

“(a) The Controller and Auditor-General:

“(b) The Solicitor-General:

“(c) Agents of the Government Life Insurance Corporation employed under section 16 of the Government Life Insurance Corporation Act 1983: 10

“(d) Canvassing agents of the National Provident Fund or of the State Insurance Office:

“(e) Crews (except officers) of Government ships: 15

“(f) Members of the Armed Forces:

“(g) The Police within the meaning of the Police Act 1958:

“(h) Any person paid only by fees or commission or engaged for a specified period under a contract for services:

“(i) Any person (other than a person on the permanent staff of the Public Service, or a wage-worker, or a temporary salaried employee) who, by that person’s retainer or commission or agreement or the nature of that person’s employment, is not required to work a full working week in the Public Service and is allowed to perform work for other persons outside the Public Service in that person’s private capacity for remuneration.” 20 25

(2) Section 32 (1) of the Government Life Insurance Corporation Act 1983 is hereby consequentially repealed. 30

4. Occupational classes and salary scales—Section 41 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) The permanent staff of the Public Service shall consist of persons employed as officers or probationers in the Public Service, whether on a full-time basis or on a part-time basis.” 35

5. Departments of the Public Service—(1) The Second Schedule to the principal Act is hereby amended by inserting, after the item relating to the Audit Office, the following item:

“Department of Conservation”. 40

(2) The said Second Schedule is hereby further amended by inserting, after the item relating to the Department of Education, the following item:

“Ministry for the Environment”.

5

New

(3) The said Second Schedule is hereby further amended by inserting, after the item relating to the Department of Statistics, the following item:

“Department of Survey and Land Information”.

10 **6. Offices and positions exempt from appeal**—(1) 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 Building Performance Guarantee Corporation, the following item:

15 “Conservation . . . Director-General.
Deputy Director-General.”

(2) The said Third Schedule is hereby further amended by inserting, after the item relating to the Ministry of Energy, the following item:

20 “Environment . . . Secretary.
Assistant Secretary.”

New

25 (2A) The said Third Schedule is hereby further amended by inserting, after the item relating to the Department of Statistics, the following item:

“Survey and Land . . . Director-General
Information . . . Deputy Director-General
Surveyor-General”.

30 (3) The said Third Schedule is hereby further amended by inserting, after the item relating to the Ministry of Women’s Affairs (as inserted by section 3 (3) of the State Services Amendment Act 1985), the following item:

“Not attached to a . . . General Manager, Government
Department . . . Computing Service.”

35 (4) The said Third Schedule is hereby further amended by omitting the item relating to the Commissioner for the Environment.

7. Consequential amendments to Ombudsmen Act 1975—

Struck Out

(1) The Ombudsmen Act 1975 is hereby amended by inserting in Part I of the First Schedule, after the item relating to the Audit Department, the following item: 5

“The Department of Conservation.”

(2) The Ombudsmen Act 1975 is hereby amended by inserting in Part I of the First Schedule, after the item relating to the Department of Education, the following item: 10

“The Ministry for the Environment.”

New

(1) The Ombudsmen Act 1975 is hereby amended by inserting in Part I of the First Schedule, after the item relating to the Customs Department, the following item: 15

“The Department of Conservation”.

(1A) The Ombudsmen Act 1975 is hereby amended by inserting in Part I of the First Schedule, after the item relating to the Department of Statistics, the following item:

“The Department of Survey and Land Information.” 20

(2) The Ombudsmen Act 1975 is hereby amended by inserting in Part I of the First Schedule, after the item relating to the Maori Trust Office, the following item:

“The Ministry for the Environment.”

(3) The Ombudsmen Act 1975 is hereby amended by inserting in Part II of the First Schedule, after the item relating to the Fire Service Commission, the following item: 25

“The Government Computing Service.”

[AS REPORTED FROM THE LABOUR AND EDUCATION COMMITTEE]

House of Representatives, 2 April 1985.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 7 June 1985.

[This Bill was formerly clauses 40 to 44 of the Union Membership Bill]

Hon. Stan Rodger

STATE SERVICES CONDITIONS OF EMPLOYMENT AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	
2. New sections substituted	
<i>Union Membership Provisions</i>	
76. Interpretation	
76A. Preference to be obtained only by virtue of a union membership clause	76CA. Insertion of union membership clause in determination negotiated by 2 or more service organisations
76B. Insertion of union membership clause	76D. Enforcement of union membership clauses
76C. Explanatory note in relation to expiry of union membership clause	<i>Exemption from Union Membership</i>
	76E. Application for exemption
	76F. Intervention by other service organisations or unions or central organisation of workers
	76G. Discrimination
	3. Repeal

A BILL INTITULED

An Act to amend the State Services Conditions of Employment Act 1977

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

1. Short Title and commencement—(1) This Act may be cited as the State Services Conditions of Employment Amendment Act 1985, and shall be read together with and deemed part of the State Services Conditions of Employment Act 1977* (hereinafter referred to as the principal Act). 5

(2) This Act shall come into force on the 1st day of July 1985.

*1977, No. 95

Amendments: 1978, No. 41; 1979, No. 111; 1980, No. 142; 1981, No. 132; 1982, No. 101; 1983, No. 47; 1983, No. 112

2. New sections substituted—The principal Act is hereby amended by repealing sections 76 to 76M (as substituted by section 2 of the State Services Conditions of Employment Amendment Act (No. 2) 1983), and substituting the following 10 heading and sections:

“Union Membership Provisions

“76. Interpretation—In this section and in **sections 76A to 76E** of this Act, unless the context otherwise requires,—

New

“ ‘Adult person’ means—

“ (a) Any person of the age of 18 years or upwards:

“ (b) Any person of any age who for the time being is in receipt of not less than the minimum rate of wages or salary payable to a person of the age of 18 20 years or upwards:

“ ‘Union membership clause’, in relation to any determination, means a clause which is included or is deemed to be included in the determination and which provides as follows: 25

“ ‘If any adult person (other than an apprentice or a person who holds a certificate of exemption from union membership issued under **section 112o** of the Industrial Relations Act 1973) who is not a member of an industrial union of workers which is registered 30 under the Industrial Relations Act 1973 and which is bound by this determination is engaged or employed by any employer bound by this determination in any position or employment that is subject to the determination, the person shall become 35 a member of the union within 14 days after that person’s engagement or, as the case may require, after this clause comes into force, and shall remain

a member of the union so long as that person continues in the position or employment.’:

5 “‘Union Membership Exemption Tribunal’ means the Union Membership Exemption Tribunal established by **section 105** of the Industrial Relations Act 1973:.

“76A. **Preference to be obtained only by virtue of a union membership clause**—(1) A union membership clause may be inserted in a determination only in accordance with the provisions of this Act.

10 “(2) Where a union membership clause is inserted in a determination in accordance with the provisions of this Act, that clause shall have effect according to its tenor.

15 “(3) Except for the preference conferred by a union membership clause that is inserted in a determination in accordance with the provisions of this Act, no person who is a member of any service organisation or any union, society, association, or other organisation of workers shall be entitled to preference in obtaining employment by virtue of that person’s membership of that service organisation or of that
20 union, society, association, or other organisation of workers.

“ (4) No determination shall contain a provision (other than a union membership clause inserted in accordance with the provisions of this Act) requiring any (*worker*) employee engaged or employed by an employer bound by the determination to
25 join any service organisation.

“76B. **Insertion of union membership clause**—
Struck Out

(1) Where—

30 “(a) Any determination prescribes the conditions of employment in respect of any position or employment; and

35 “(b) The service organisation that negotiated the determination was at the commencement of the **Union Membership Act 1984** both a service organisation and a union of workers registered under the Industrial Relations Act 1973,—

a union membership clause shall be inserted or be deemed to be inserted in the determination.

New

“(1) Where—

“(a) Any determination prescribes the salary or wages in respect of any position or employment; and

“(b) Any service organisation that negotiated the determination, either alone or in conjunction with other service organisations, was at the commencement of the **State Services Conditions of Employment Amendment Act 1985** both a service organisation and a union of workers registered under the Industrial Relations Act 1973,—

a union membership clause shall be inserted or be deemed to be inserted in the determination and shall apply in respect of any employee who holds any such position or undertakes any such employment; but that clause shall not apply in respect of any employee, where 2 or more service organisations take part in the negotiations, if the salary or wages payable in respect of the position held or employment undertaken by that employee were negotiated by a service organisation that is not a union of workers registered under the Industrial Relations Act 1973.

“(2) Where a union membership clause is inserted or deemed to be inserted in a determination by **subsection (1)** of this section, that union membership clause shall have effect only so long as a union membership clause (as defined in section 98 of the Industrial Relations Act 1973) is inserted or deemed to be inserted in the awards or collective agreements (as defined in the Industrial Relations Act 1973) by which the members of the (*service organisation*) union are bound.

“76C. **Explanatory note in relation to expiry of union membership clause**—Where a union membership clause is inserted, or deemed to be inserted, in a determination, the (*Court shall ensure that the determination contains*) employing authority shall attach to the determination an explanatory note stating the date on which the clause will expire unless in a ballot, which is conducted after the insertion or deemed insertion of that clause and which is so conducted pursuant to the rules included, or deemed to be included, by section 99 of the Industrial Relations Act 1973 in the rules of the union of workers, not less than 50 percent of the valid votes recorded are in favour of the union membership clause.

New

“76CA. Insertion of union membership clause in determination negotiated by 2 or more service organisations—Where—

- 5 “(a) Two or more service organisations negotiate a determination; and
- “(b) Under **section 76B** of this Act, a union membership clause is inserted or deemed to be inserted in that determination; but
- 10 “(c) Not all of the service organisations that negotiate the determination are entitled to have a union membership clause inserted in the determination,—
- the explanatory note required by **section 76A** of this Act shall state, in addition to the matters required by that section, the
- 15 positions or employment in respect of which the union membership clause does not apply.

“76D. Enforcement of union membership clauses—

- (1) Where pursuant to this Act a union membership clause is inserted in a determination, the following provisions shall
- 20 apply:
- “(a) Every employee to whom the union membership clause applies shall be liable to a penalty not exceeding
- 25 ~~(\$500)~~ \$50 if that person fails to become a member of the union in accordance with that clause, after having been requested to do so by any officer or authorised representative of the union, or if, having become a member of the union, that person fails to remain a member in accordance with that clause:
- 30 “(b) The employer or employing authority shall be liable to a penalty not exceeding ~~(\$1,500)~~ \$500 if the employer or employing authority continues to employ any person, being a person to whom that clause applies, after having been notified by any officer or authorised representative of the union that
- 35 the person has been so requested to become a member of the union and has failed to become a member in accordance with that clause, or that the person, after having become a member of the union, has failed to remain a member in accordance with
- 40 that clause.
- “(2) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(3) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(4) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications. 5

“(5) An action for the recovery of a penalty under this section may be brought only by the union. 10

“(6) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly. 15

“Exemption from Union Membership

“76E. **Application for exemption**—(1) Any person who is required by a union membership clause to become or to remain a member of a service organisation that is an industrial union may apply to the Secretary of the Union Membership Exemption Tribunal for a certificate of exemption from union membership. 20

“(2) The Union Membership Exemption Tribunal shall have, in addition to its other functions, the function of considering and determining every application made under subsection (1) of this section and the provisions of sections 111, 112c to 112i, and 112k to 112q of the Industrial Relations Act 1973 shall apply accordingly with such modifications as are necessary. 25

“76F. **Intervention by other service organisations or unions or central organisation of workers**—(1) Where any other service organisation or union or the central organisation of workers considers that it has an interest in the hearing of an application under section 76E (1) of this Act, it may apply to the Secretary of the Union Membership Exemption Tribunal for the service organisation’s or union’s or organisation’s secretary or any other person appointed in that behalf to also be present and be heard at the hearing. 30 35

“(2) The Secretary of the Union Membership Exemption Tribunal shall refer every application under this section to the Union Membership Exemption Tribunal, which shall determine, before the hearing, whether or not the service 40

organisation or union or the central organisation of workers has such an interest in the hearing as would justify the service organisation's or union's or central organisation's secretary or other person so appointed being entitled to be present and to be heard.

“76G. **Discrimination**—(1) It shall be unlawful for any employer or employing authority—

“(a) Other than by the lawful insertion in any determination of a union membership clause within the meaning of **section 76** of this Act, to make membership of a service organisation a condition to be fulfilled by any person who wishes to obtain or retain any position or employment; or

“(b) To make non-membership of a service organisation a condition to be fulfilled by any person who wishes to obtain or retain any position or employment; or

“(c) To exert undue influence on any employee with intent to induce that employee—

“(i) To become or remain a member of a service organisation; or

“(ii) To cease to be a member of a service organisation; or

New

“(iia) Not to become a member of a service organisation; or

“(iii) On account of the fact that that employee is, or, as the case may be, is not, a member of a service organisation, to resign from any position or to leave any employment.

“(2) No service organisation and no officer or other person acting on behalf of any service organisation (whether lawfully authorised to do so or not) shall exert undue influence on any person with intent to induce that person—

“(a) To join a service organisation; or

“(b) On account of the fact that that person is not a member of a service organisation, to resign any position or to leave any employment.

“(3) Every person who contravenes **subsection (1)** or **subsection (2)** of this section shall be liable,—

“(a) If an officer of a service organisation or person acting on behalf of a service organisation (whether lawfully authorised to do so or not), to a penalty not exceeding \$500:

“(b) If a service organisation, to a fine not exceeding \$1,500:

New

“(c) If an employer or employing authority, to a penalty not exceeding \$1,500.”

“(4) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section. 5

“(5) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(6) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 and 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications. 10 15

“(7) An action for the recovery of a penalty in respect of an alleged contravention of **subsection (1)** or **subsection (2)** of this section may be brought only by the person or employee in relation to whom the contravention is alleged to have taken place. 20

“(8) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly. 25

“(9) Nothing in this section renders unlawful the enforcement of a union membership clause that is included or deemed to be included in any determination.”

3. Repeal—The State Services Conditions of Employment Amendment Act (No. 2) 1983 is hereby consequentially repealed. 30