

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]
House of Representatives, 12 Decembr 1962

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

Hon. Mr Shand

STATE SERVICES

ANALYSIS

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A BILL INTITULED

An Act to provide for the appointment of a State Services Commission, to assist in promoting the efficiency of the State services in the performance of their duties, and in respect of the Public Service to ensure that their members are impartially selected, fairly remunerated, administratively competent, and imbued with the spirit of service to the community 5

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, 10 as follows:

1. Short Title and commencement—(1) This Act may be cited as the State Services Act 1962.

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-three. 15

2. Interpretation—In this Act, unless the context otherwise requires,—

“Commission” means, except in section 29 of this Act, the State Services Commission as constituted under section 3 of this Act: 20

“Commissioner” means a member of the Commission as constituted under section 3 of this Act:

- “Employee”, in relation to the Public Service, means a person employed therein, whether on the permanent staff (including any probationer) or temporarily or as a wage worker:
- 5 “Government Service Tribunal” or “Tribunal” means the Government Service Tribunal established under the Government Service Tribunal Act 1948:
- “Minister” means the Minister for the time being charged with the administration of this Act:
- 10 “Occupational class” means any group of employees of the Public Service expressly prescribed as an occupational class by the Commission or by the Government Service Tribunal:
- “Officer”, in relation to the Public Service, means an employee of the Public Service other than a probationer or a temporary salaried employee or a wage worker:
- 15 “Permanent head” means the permanent head of a Department:
- 20 “Prescribed” means prescribed by or under this Act or by regulations or instructions issued under this Act:
- “Probationer” means a person serving on probation in terms of section 27 or section 55 of this Act:
- 25 “Promotion” means advancement from one grade to another within an occupational class or transfer from one occupational class to another involving in either case an increase in maximum salary:
- 30 “Public Service” means that part of the State services to which Parts III to V of this Act apply in accordance with section 22 of this Act; and does not include the Legislative Department, the Post Office, the New Zealand Government Railways Department or any other Department or part of the State services to which Parts III to V of this Act do not apply in accordance with that section:
- 35 “Public Service Appeal Board” or “Appeal Board” means the Public Service Appeal Board constituted under section 61 of this Act; and includes any Special Appeal Board constituted under section 62 of this Act:
- 40 “Public Service determination” means a Public Service determination made under section 41 or section 42 of this Act:
- 45 “Public Service order” means an order made by the Government Service Tribunal on an application lodged by a service organisation under section 41 or section 42 of this Act:

“Service organisation” means the New Zealand Public Service Association (Incorporated) and such organisation or organisations as may from time to time be prescribed by Order in Council as representing for the purposes of this Act employees of the Public Service or of any other branch of the State services or any class or classes thereof: 5

“State services” means all instruments of the Crown in respect of the government of New Zealand, whether Departments, corporations, agencies, or other instruments; but does not include the Governor-General, members of the Executive Council, Ministers of the Crown, or members of Parliament: 10

“Temporary employee” means an employee for the time being employed in terms of section 48 of this Act: 15

“Wage worker” means a person employed in accordance with section 49 of this Act:

“Wage worker determination” means any determination of the Commission which relates to the wages or terms and conditions of employment of wage workers made under section 42 or section 49 of this Act: 20

“Wage worker order” means any order of the Tribunal which relates to the wages or terms and conditions of employment of wage workers made under section 42 or section 49 of this Act. 25

PART I

THE STATE SERVICES COMMISSION

3. State Services Commission—(1) There is hereby established a Commission to be known as the State Services Commission, and a Department of State to be known as the Office of the State Services Commission. 30

(2) Except for the purposes of section 29 of this Act, the Commission shall consist of not more than four persons who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister. 35

(3) One Commissioner shall be appointed by the Governor-General in Council as the Chairman of the Commission, and shall be the permanent head of the Office of the State Services Commission. Another Commissioner shall be appointed by the Commission as the Deputy Chairman of the Commission and shall have power to act in place of the Chairman in the event of the incapacity of the Chairman by reason of illness or absence or any other cause. 40

(4) Every Commissioner shall be appointed for a term of not more than five years and, except as provided in subsection (5) of this section, shall be eligible for reappointment.

5 (5) No person shall be appointed or reappointed to the Commission after he has attained the age of sixty years.

(6) In the case of the appointment to the Commission of an officer of the State services, his term of office as a Commissioner shall be deemed to be continuous service in that branch of the State services in which he was employed at the
10 date of that appointment for the purposes of:

(a) The Superannuation Act 1956:

(b) Appointment to any position in the State services on the termination of his service as a Commissioner:

(c) Entitlement to leave of absence.

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

25 (8) The powers of the Commission shall not be affected by any vacancy in its membership.

(9) The Commissioners shall be paid such salaries as may from time to time be appropriated by Parliament.

(10) Every reference in any enactment or document to the
30 Public Service Commissioner or to the Public Service Commission or to the Office of either of them shall, after the commencement of this Act, unless the context otherwise requires, be read as references to the State Services Commission as constituted under this section or the Office of the
35 State Services Commission, as the case may be.

(11) Every reference to the State Services Commission in any enactment passed or document made after the passing of this Act shall, unless the context otherwise requires, be read as a reference to the State Services Commission as constituted
40 under this section.

Cf. 1923, No. 27, s. 20 (1); 1946, No. 42, s. 5; 1951, No. 72, ss. 2, 3

4. Removal from office—(1) Any Commissioner may be suspended or removed from office in accordance with the following provisions of this section and not otherwise.

(2) The Governor-General may suspend any Commissioner from office for misbehaviour or incompetence, but a Commissioner shall not be removed from office except as provided in this section. 5

(3) The Governor-General shall cause to be laid before Parliament a full statement of the grounds of any suspension within seven days after the date of that suspension if Parliament is then in session, or if Parliament is not in session then within seven days after the date of the commencement of the next ensuing session. 10

(4) Unless the House of Representatives, within twenty-one days from the date on which the statement in respect of any Commissioner suspended under this section has been laid before it, declares by resolution that he ought to be removed from office, the Commissioner shall be deemed to be restored to office as from the date of his suspension; and if the House of Representatives within the said time does so declare, the Commissioner shall be removed by the Governor-General from the date of the suspension. 15 20

(5) Unless the Governor-General in Council otherwise directs, a Commissioner who has been removed from office under this section shall not be entitled to be reappointed to the State services and shall not be entitled to a retiring allowance under the Superannuation Act 1956. 25

Cf. 1912, No. 23, s. 10

5. Vacation of office—(1) A Commissioner shall be deemed to have vacated his office if he— 30

(a) Without the approval of the Governor-General—

(i) Engages during his term of office in any paid employment or business other than the duties of his office; or

(ii) Is appointed to and accepts any other office or position in the State services: 35

(b) Becomes bankrupt, compounds with his creditors, or makes an assignment of his salary for their benefit:

(c) Absents himself from duty except with the authority of the Governor-General or of the Commission: 40

(d) Resigns his office by writing under his hand addressed to the Governor-General.

(2) Notwithstanding anything in this section, a Commissioner may act by direction of the Commission temporarily in any position in the Public Service which is for the time being vacant.

5 Cf. 1912, No. 23, s. 11

6. Superannuation rights of Commissioners—On the termination of the appointment of any Commissioner who was a contributor to the Government Superannuation Fund when he was appointed as a Commissioner, he shall, unless he is
10 reappointed as a Commissioner or appointed to another office in the Government service within the meaning of the Superannuation Act 1956, or unless he has ceased to be a contributor to the Government Superannuation Fund, or unless (under subsection (5) of section 4 of this Act) he is not entitled
15 to a retiring allowance, be entitled to receive from the Fund an annual retiring allowance for the rest of his life computed in the manner prescribed by Part II of the Superannuation Act 1956, notwithstanding that he may not have attained the
20 age or have had the length of service which would entitle him in accordance with the terms of that Act to a retiring allowance.

Cf. 1946, No. 42, s. 5

7. Meetings of the Commission—(1) Meetings of the Commission shall be held at such times and places as the Chairman
25 or the Commission from time to time appoints.

(2) At any meeting of the Commission, the Chairman or, if the Chairman is not present, the Deputy Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

30 (3) All questions before the Commission shall be determined by a majority of the valid votes recorded thereon.

(4) This section shall have no application while the Commission for the time being consists of only one member.

8. Quorum—At all meetings of the Commission while it
35 comprises two or more members, two members shall form a quorum.

9. Procedure of Commission—Subject to the provisions of this Act, the Commission may regulate its procedure and exercise its functions in such manner as it thinks fit.

40 Cf. 1946, No. 42, s. 8

Powers, Duties, and Functions of the Commission

10. Functions and powers of the Commission—(1) The Commission shall be responsible to the Minister for the administration of this Act:

Provided that, in matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, disciplining, or the cessation of the employment, of any employee of the Public Service, or other matters) the Commission shall not be responsible to the Minister but shall act independently.

(2) The Commission shall have the powers necessary to perform the functions and carry out the duties described in this Part of this Act as well as the functions and duties appertaining to it under any other provision of this Act or any other enactment.

11. Functions of Commission in respect of branches of the State services and other bodies—(1) The Commission shall exercise the powers conferred by subsections (2) and (3) of this section—

- (a) In respect of the part of the State services that is specified in the First Schedule to this Act; and
- (b) In respect of any other part of the State services (other than the Public Service), as directed by the Prime Minister; and
- (c) In respect of any other body whose expenditure is met wholly or principally by money appropriated permanently or annually by Parliament, as directed by the Prime Minister.

(2) The Commission shall, when directed by the Minister at the request of the Minister in charge of or responsible for any part of the State services or other body to which this section applies as aforesaid, associate itself with the head of that part of the State services or other body in the investigation of its organisation, methods, or procedures:

Provided that, when reporting to the Minister, the Commission shall ensure that a copy of its report is sent to the Minister in charge of or responsible for any part of the State services or other body investigated.

(3) The Commission shall, when requested by the head of or the Minister in charge of or responsible for any part of the State services or other body to which this section applies as aforesaid,—

- (a) Provide management consultation services, including advice as to efficient work and control methods and techniques, data processing equipment, and problems of organisation:
- 5 (b) Furnish advice on and assist with the training of staff.

12. Functions of the Commission in respect of the Public Service—(1) The Commission shall, in respect of the Departments of the Public Service, be responsible for—

- 10 (a) Reviewing the machinery of government, including the allocation of functions to and between Departments, the desirability of or need for the creation of new Departments and the amalgamation or abolition of existing Departments, the coordination of the activities of Departments, and (subject to the provisions of the Public Revenues Act 1953) the extent and nature of controls exercised by any one Department over the operations of another Department:
- 15 (b) Reviewing the efficiency and economy of each Department, including the discharge by the permanent head of the responsibilities placed on him by section 25 of this Act:
- 20 (c) The provision of suitable office accommodation and the prescription and supervision of physical working conditions of all employees in the Public Service:
- 25 (d) Approving and reviewing establishments of staff:
- (e) Acting as the central personnel authority for the Public Service and carrying out such functions as are prescribed in this Act:
- 30 (f) Prescribing basic training programmes, furnishing advice on and assisting with the training of staff, and making recommendations to the Minister on the facilities necessary for the proper training of staff:
- 35 (g) Providing management consultation services, including advice as to efficient work and control methods and techniques, data processing equipment, and problems of organisation.
- 40 (2) The Commission shall at all times in respect of the Public Service conduct such inspections and investigations, and be entitled to receive such reports, as it considers necessary to advise a permanent head or to report to the Minister regarding the matters dealt with in this section, or
- 45 such other matters as the Minister may direct or the circumstances require.

13. Annual report—(1) The Commission shall as soon as practicable after the thirty-first day of March in each year furnish to the Minister a report on the state of the efficiency and economy of the Public Service, and on the operations of the Commission for the year ending with that date. 5

(2) A copy of the report shall be laid before Parliament within twenty-eight days after the date on which it is furnished to the Minister if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session. 10

14. Delegation of powers—(1) The Commission may from time to time, either generally or particularly, delegate any of its powers to any of its members or to any other person or persons. 15

(2) In any case where the Commission has, pursuant to subsection (1) of this section, delegated any of its powers to any person, that person may, with the prior approval in writing of the Commission, delegate such of those powers as the Commission approves to any other person or to the holder for the time being of any specified office in the Public Service. 20

(3) Subject to any general or special directions given by the Commission, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation. 25

(4) Every Commissioner and every other person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 30

(5) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders of the time being of a specified office or of specified classes of offices. 35

(6) Every such delegation shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Commission.

(7) Any such delegation shall, until it is revoked, continue in force according to its tenor, notwithstanding any changes in the membership of the Commission. 40

Cf. 1946, No. 42, s. 9

15. **Power to summon witnesses**—(1) For the purposes of carrying out the duties and functions imposed on the Commission by this Act or any other Act, the Commission or any Commissioner shall have the same powers and authority to
5 summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the Commissions of Inquiry Act 1908, and the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly.

(2) Any investigation or inquiry which the Commission
10 is empowered to conduct under this Act or any other Act may be conducted by the Commission acting in its own right or by a Commissioner or any officer or other person specially appointed by the Commission to conduct the investigation or inquiry and to report thereon to the Commission, and for
15 the purposes of any such investigation or inquiry the powers and authority conferred on the Commission by subsection (1) of this section shall attach to and may be exercised by the Commissioner, officer, or other persons so appointed.

16. **Fees and expenses in connection with investigation or inquiry**—Notwithstanding anything in the Commissions of Inquiry Act 1908, the Commission may authorise the payment, out of money appropriated by Parliament for the purpose, of fees and expenses incurred in connection with any such investigation or inquiry.

25 Cf. 1912, No. 23, s. 13

PART II

ADVISORY COMMITTEE ON HIGHER SALARIES IN THE STATE SERVICES

17. **Constitution of Committee**—(1) There is hereby established a Committee, to be known as the Advisory Committee on Higher Salaries in the State Services.

(2) The Committee shall consist of not more than five members who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister.

35 (3) One member shall be appointed by the Governor-General in Council as the Chairman of the Committee; and the Committee shall appoint one of the other members to be the Deputy Chairman of the Committee.

(4) Every member of the Committee shall be appointed
40 for a term of three years, and may from time to time be reappointed, or may be at any time removed from office by the Governor-General for disability, bankruptcy, neglect of

duty, or misconduct, proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Prime Minister.

18. Meetings of Committee—The Committee shall meet at such times and places as the Prime Minister or the Chairman may appoint, and, except as otherwise specified in this Part of this Act, shall regulate its own procedure.

19. Functions of Committee—(1) The function of the Committee shall be to consider and make recommendations to the Prime Minister on the levels of remuneration for—

- (a) Senior employees in the Legislative Department, the Post Office, the Public Service, and the New Zealand Government Railways Department, whose salaries are above the level of the jurisdiction of the employing authorities;
- (b) The Chiefs of Staff and such other senior officers in the New Zealand armed forces as may be directed by the Prime Minister;
- (c) The Commissioner of Police;
- (d) Such other positions in the State services, not being positions in the Public Service or in the Departments specified in paragraph (a) of this subsection, as the Prime Minister may direct;
- (e) Such other senior persons and classes of senior persons, being persons and classes of persons whose salaries are met wholly or principally from money appropriated permanently or annually by Parliament, as the Prime Minister may direct:

Provided that the Committee may confine its recommendations to a limited number of key positions in one or more of the groups specified:

Provided also that, as well as reporting at the direction of the Prime Minister, the Committee may of its own motion make recommendations to the Prime Minister.

(2) In making the recommendations specified in subsection (1) of this section the Committee shall take into account such factors as it considers relevant, and (without limiting its general discretion) in particular:

- (a) The levels of remuneration and responsibility in professions, and for senior executives in industry, commerce, finance, and local authorities, and in Government corporations and agencies which have power to fix the salaries of their own staff:

- (b) Movements in salary at lower levels of the State services:
- (c) The need to preserve adequate margins for skill and responsibility:
- 5 (d) The need to provide sufficient inducement for recruitment.
- (3) Every member of the Committee and every person for the time being serving the Board shall maintain and aid in maintaining the secrecy of all matters relating to its operation
10 which comes to his knowledge, and shall not communicate any such matters to any person, except for the purpose of carrying into effect this Part of this Act.

20. **Committee to be Commission of Inquiry**—The Committee shall, for the purposes of this Part of this Act, be
15 deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and subject to this section, all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly.

21. **Fees, travelling allowances, and other expenditure**—
20 (1) The Committee is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Committee remuneration by way of fees, salary, or allowances
25 and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

(3) All fees, salaries, allowances, and other expenditure payable or incurred under, or in the administration of, this
30 Part of this Act shall be payable out of money appropriated by Parliament for the purposes of this Act.

PART III

THE PUBLIC SERVICE

22. **The Public Service**—(1) Except where otherwise provided in Parts III to V of this Act or in any other Act that
35 came into force after the thirty-first day of March, nineteen hundred and thirteen, whether before or after the commencement of this Act, the provisions of Parts III to V of this Act shall apply to—

- 40 (a) All persons employed in any of the Departments specified in the Second Schedule to this Act:

(b) The Departments specified in the said Second Schedule so far as may be necessary for the due administration of Parts III to V of this Act:

(c) All offices and positions in the Departments specified in the said Second Schedule. 5

(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 the Controller and Auditor-General, the Deputy Controller and Auditor-General, the Solicitor-General, canvassing agents of the Government Life Insurance Office or of the National Provident Fund or of the State Fire Insurance Office, (*officers and crew (except the Master)*) crews (except officers) of Government ships, members of the armed forces, the Police within the meaning of the Police Act 1958, any person paid only by fees or commission or engaged for a specified period under a contract for services, and any person who by his retainer or commission or agreement or the nature of his 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 his private capacity for remuneration. 10 15 20

(3) Wherever in any Act in force before the first day of April, nineteen hundred and thirteen, it is provided that any appointment to any Department of the Public Service may be made by the Governor-General or by a Minister or by any other person, that appointment shall be made by the Commission in accordance with this Act. 25

Cf. 1912, No. 23, ss. 4, 60 (3)

23. Revocations—All declarations made pursuant to section 4 of the Public Service Act 1912 are hereby revoked. 30

24. Conditions of service of exempted employees—Notwithstanding the provisions of section 22 of this Act, and subject to the provisions of any other enactment for the time being in force, the Governor-General may from time to time, by Order in Council, make regulations determining the conditions of service of persons employed or to be employed in the State services (whether by salary, fee, commission, or otherwise) other than persons employed or to be employed in the Legislative Department, the Post Office, the Public Service, and the New Zealand Government Railways Department. 35 40

25. **Functions of permanent head**—In addition to any other functions and duties imposed by any other Act, the permanent head of every Department of the Public Service shall be responsible to the Minister for the time being in charge of that Department for the efficient and economical administration thereof.

Appointments and Promotions

26. **Appointments to Public Service**—(1) Subject to the provisions of this Act, all appointments to the Public Service shall be made by the Commission.

(2) Subject to the provisions of this Act, the Commission shall, in making appointments to the Public Service, have regard to the need to maintain and develop an efficient career service based on recruitment of applicants adequately qualified for the exacting requirements of the Service; but no appointment to the Public Service shall be made unless the Commission is satisfied that the appointment is necessary, and that the person appointed has clearly more merit for the position to be filled than any officer who is qualified and available for the position; and for the purposes of this section merit shall be determined in accordance with subsection (5) of section 28 of this Act.

(3) Every appointment of any person to be an officer or probationer shall be notified within the Public Service by official circular or otherwise.

Cf. 1912, No. 23, ss. 40 (2), 60 (1)

27. **Appointments to be on probation**—(1) Except as otherwise expressly provided in this Act or in any other Act or as determined by the Commission, every person who is first appointed to the permanent staff of the Public Service, and every person who, having ceased to be so employed in the Public Service, is again appointed thereto, shall be on probation for such period, being not less than six months and not exceeding two years (except as provided in subsection (2) of this section), 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.

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

(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 date as may be specified in that behalf in the instrument.

(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: 5

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. 10 15

Cf. 1912, No. 23, s. 39

28. Appointments of officers to vacancies—(1) Subject to the provisions of this Act, all appointments of officers to vacancies in the Public Service shall be made by the Commission. 20

(2) The Commission shall whenever practicable notify every vacancy or prospective vacancy in a permanent position (including any newly created permanent position) in the *Public Service Official Circular* or in such other manner as it thinks sufficient to enable any officer qualified for appointment to make application therefor. 25

(3) Notwithstanding anything in subsection (2) of this section, the Commission may in any case fill any vacancy without having notified the same: 30

Provided that no appointment shall be made to any office or position specified in the Third Schedule to this Act unless the vacancy has been notified in the *Public Service Official Circular*.

(4) In the event of two or more officers being available for the same position, preference shall be given to that officer who, in the opinion of the Commission, has the most merit for appointment to the position. 35

(5) For the purposes of this Act, the merit of an officer for promotion shall be determined by— 40

- (a) Work experience and competence shown in performance of duties previously carried out by him; and
- (b) Personal qualities, characteristics, and attributes relevant to the position to be filled; and

(c) Relevant educational or other qualifications:

Provided that, where two or more officers who are applicants for a vacancy are adjudged to be equal in merit for promotion having regard to the matters specified in the foregoing provisions of this subsection, regard shall be given to the length of continuous permanent service of each officer.

(6) Every promotion of an officer or probationer shall be notified within the Public Service by notice in the *Public Service Official Circular* or otherwise.

10 (7) The Commission may in any case allow any officer to decline any offered promotion or appointment without prejudice to his right to any future promotion or appointment for which he might be qualified.

Cf. 1927, No. 60, s. 8

15 **29. Higher appointments**—(1) In the event of a vacancy or impending vacancy in any office or position which is specified in the Third Schedule to this Act (howsoever that office or position is for the time being designated) appointment to the office or position shall be made by the State
20 Services Commission which for the purposes of this section shall be constituted as follows:

(a) The Chairman of the State Services Commission as constituted under section 3 of this Act, who shall be the Chairman of the Commission as constituted
25 under this section:

(b) A member of the State Services Commission, as constituted under section 3 of this Act, nominated by the Commission as so constituted for the purposes of each appointment:

30 (c) Two permanent heads appointed by the Minister from a panel of eight permanent heads elected every two years by a meeting of permanent heads of the Public Service, of which two permanent heads one shall be so appointed after consultation with the
35 New Zealand Public Service Association (Incorporated).

(2) Any member of the Commission as constituted under section 3 of this Act, or any one of the panel of eight permanent heads referred to in paragraph (c) of subsection
40 (1) of this section, shall not be eligible for nomination or

(*selection*) appointment in accordance with subsection (1) of this section if he himself is an applicant for the office or position to be filled or if he has ceased to be a permanent head.

(3) The Commission as constituted under this section may examine applicants, seek advice from such sources as it considers relevant and necessary, and, in the case of a subordinate appointment, shall allow the permanent head of the Department the right to attend the selection interviews and be heard before an appointment is made. 5

(4) At any meeting of the Commission as constituted under this section, each member shall have a deliberative vote and in the case of an equality of votes the Chairman shall also have a casting vote. All matters shall be decided by a majority of the votes recorded thereon. 10

(5) The Commission as constituted under this section shall— 15

(a) Have power from time to time to invite such other persons as it thinks fit to assist in its deliberations:

(b) Except as otherwise specified in this section, regulate its own procedure. 20

30. Business taken over—(1) Where any business or undertaking is placed under the control of the Commission as a going concern, the employees thereof may be appointed to the permanent staff of the Public Service in the positions respectively held by them in the business or undertaking. 25

(2) Every person so appointed shall be classified and graded, but may be paid such allowance (if any) in addition to salary as the Commission considers appropriate having regard to the remuneration and emoluments received by the employee in respect of his employment in the business or undertaking before it was placed under the control of the Commission. 30

(3) No appeal shall lie against the first appointment of any person under this section, but every promotion of any such person after his first appointment as aforesaid shall be subject to appeal in accordance with Part IV of this Act. 35

Cf. 1946, No. 42, s. 13

31. Appointment of officers of other branches of State services to Public Service—Any officer of the Post Office, or any person who is employed and has then been employed continuously (whether before or after the commencement of this Act) for an immediately preceding period of not less than two years in any Division of the New Zealand Government Railways Department or in the Legislative Department, 40

may be appointed to any vacancy in the Public Service as if he were an officer thereof, and subsection (1) of (section 26) section 27 of this Act shall not apply to his appointment; but he shall not have any right of appeal under section 64 of this Act nor be deemed to be an officer of the Public Service for any other purpose until he has been so appointed.

32. Effective date of appointments—(1) Notwithstanding anything to the contrary in any enactment other than this section, the power conferred by this Act or by any other enactment to appoint any person to any position in the Public Service shall be deemed to include a power to appoint that person from and including a date to be specified in that behalf in the instrument or minute of appointment, whether or not that date is earlier or later than the date on which the power of appointment is exercised, and salary shall be payable from and including such date (not being earlier than the date so specified in the instrument or minute) as the Commission may determine.

(2) The provisions of subsection (1) of this section shall apply notwithstanding that any other person previously appointed to the position may on the specified date and for any time thereafter continue to hold and receive the salary for that position though (by reason of absence or other circumstance) not actually performing the duties thereof.

25 Cf. 1946, No. 16, s. 33

33. Acting appointments—(1) In the case of absence from duty of any employee (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in the Public Service (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the Commission to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(2) No such direction and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee had not been appointed to any position to which the direction relates.

40 Cf. 1912, No. 23, s. 5

34. Evidence of appointments—(1) Any appointment to any office or position in the Public Service shall be made, confirmed, or approved in writing by an instrument or minute by the Commission or by any person to whom the Commission has delegated power in that behalf in accordance with section 14 of this Act; and, notwithstanding anything to the contrary in any Act, it shall not be necessary for the Commission or any such person to execute any formal warrant or other instrument in special form. 5

(2) A certificate signed by a Commissioner or a permanent head that any person named in the certificate was appointed to any office or position in the Public Service from and including a day stated therein shall be sufficient evidence that the person so named was duly so appointed to and continues to hold the office or position unless the contrary is proved. 10 15

Cf. S.R. 1950/216, regs. 128, 129

35. Appointments subject to appeal to be provisional—(1) Every appointment or promotion which is subject to a right of appeal by any officer under section 64 of this Act shall be provisional until all appeals lodged in respect thereof have been duly determined, or, if no appeal is lodged, until the time for the lodging of appeals has expired. 20

(2) If any appeal against a provisional appointment or promotion is allowed, the Commission shall cancel the provisional appointment or promotion. 25

(3) The Commission may at any time cancel a provisional appointment or promotion, whether or not an appeal against the appointment or promotion has been lodged, if in its opinion the office is not required or can be suitably filled by the transfer without promotion of any other officer, or if it considers that further notification of the position is desirable, or for any other sufficient reason. 30

Cf. 1927, No. 60, s. 9

Transfers and Terminations

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36. Redundancy—(1) If the Commission at any time finds that a greater number of persons is employed in any Department of the Public Service than it considers to be necessary for the efficient working thereof, such persons as are redundant may (if practicable) be transferred to any other Department of the Public Service which in the opinion of the Commission requires additional assistance; and if any person so found 40

to be redundant cannot be usefully employed in any other Department of the Public Service the Commission may terminate his employment.

5 (2) If at any time the Commission finds that any officer is in receipt of a greater salary than the maximum determined by it to be fairly appropriate to the work performed by or assigned to that officer, the case shall be dealt with by the Commission subject to the following provisions:

10 (a) If in the opinion of the Commission the officer is fitted for or capable of performing work of a class equivalent to the amount of his salary, and that class of work is available in the same or another Department, the Commission may assign that class of work to that officer:

15 (b) If that class of work is not available, the Commission may reduce the salary of the officer to the maximum determined by the Commission to be appropriate to the class of work actually performed by or assigned to him:

20 (c) If any such reduction of salary is certified by the Commission to be made on the ground only that no work equivalent to the salary previously received by the officer affected is at the time of the reduction available, and the officer affected elects to continue in the Public Service at that reduced salary, the officer shall remain eligible for promotion as from the grade to which his salary before reduction was incident, notwithstanding the reduction, and shall be entitled to employment on the class of work to which his previous salary was appropriate as soon as a vacancy occurs therein in preference to any other officer of the same or a lower grade whose salary has not been reduced.

Cf. 1912, No. 23, ss. 12 (2), 27

35 **37. Employees may be transferred**—(1) The Commission may transfer any employee, whether on promotion or otherwise, from one position in any Department of the Public Service to a position in the same or any other such Department, whether or not the transfer involves a change of location; and, 40 except as otherwise provided in this Act, there shall be no right of appeal against any such transfer.

(2) Any officer for the time being occupying any position in the Public Service which is for the time being exempted from section 64 of this Act may be appointed at any time without reduction in his salary to any office or position in the State services by the authority having lawful power to make that appointment: 5

Provided that the superannuation rights of any person appointed under this subsection shall be preserved.

Cf. 1912, No. 23, s. 50

38. Security transfers—(1) If the Commission is of the opinion that any officer should be transferred in the interests of national security, it shall furnish the officer with a statement in writing setting out the reasons for its opinion as fully as they may be properly disclosed having regard to the interests of national security, and shall require the officer to reply in writing within fourteen days of the date on which the statement is delivered to him advising whether he agrees to be transferred, or wishes the Security Review Authority constituted as hereinafter provided to investigate the matter. Any such officer may be placed on leave on full pay pending his transfer or other conclusion to the matter. 10
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(2) If the officer wishes the Security Review Authority to investigate the matter, the Commission shall transmit the officer's reply together with the evidence on which its opinion is founded to the Security Review Authority. 25

(3) In arriving at its conclusions the Security Review Authority shall hear in private evidence tendered by the Commission and any other witnesses, and shall give the officer concerned an opportunity to be heard, and may permit him to be represented by counsel or any other person and have other persons testify as to his record, reliability and character, and may receive such other evidence as it thinks fit, whether admissible in a Court of law or not. The Security Review Authority shall regulate its procedure in such manner as it thinks fit. 30
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(4) *(Regardless of the procedure adopted by the Security Review Authority its procedure and conclusions)* Except on the ground of lack of jurisdiction, the procedure and conclusions of the Security Review Authority shall not be called in question in any Court and no writ of mandamus, prohibition, or certiorari shall lie in respect thereof to any Court. 40

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

(6) No appeal shall lie to the Board of Appeal against any determination to transfer certified by the Commission to have been made under the provisions of this section, nor shall (section 62) section 64 of this Act have any application in the case of any such transfer. A certificate by the Commission that a transfer has been made under this section shall be conclusive evidence thereof.

(7) No appeal shall lie to the Board of Appeal against any change in classification or grading made under subsection (5) of this section.

(8) Except with the written consent of the Minister or the officer concerned, no report or account of any application, evidence, or proceedings before the Security Review Authority or of any decision of the Security Review Authority shall be published in any newspaper or other document. Every person who publishes or causes to be published any report or account in contravention of this subsection commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds.

(9) The Security Review Authority shall consist of three persons to be appointed by the Governor-General on the recommendation of the Minister, which persons shall hold office during the pleasure of the Governor-General. One of the persons shall be appointed Chairman, and shall be a Judge or a retired Judge of the Supreme Court or a Magistrate or a retired Magistrate.

(10) The Security Review Authority shall 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 except sections 11 and 12 (which relate to costs) shall apply accordingly.

(11) The Security Review Authority is hereby declared to be a statutory Board within the meaning of the fees and Travelling Allowances Act 1951.

(12) There shall be paid, out of money appropriated by Parliament for the purpose, to the members of the Security Review Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Cf. 1951, No. 72, s. 7 10

39. Failure to comply with a direction to transfer—

(1) Any employee who fails to comply with a direction of the Commission requiring him to transfer from one position or locality to another or to take up an appointment to which subsection (2) of section 37 of this Act applies may be forthwith dismissed or reduced in grading by the Commission, unless he justifies the noncompliance in the opinion of the Commission by adducing some valid and sufficient reason therefor.

(2) There shall be no right of appeal against any dismissal or reduction in grading under this section:

Provided that nothing in this subsection shall affect the right to appeal against transfer conferred by paragraph (f) of subsection (1) of section 64 of this Act.

Cf. 1912, No. 23, s. 50 25

40. Notice of termination of employment—(1) Every officer other than an apprentice shall be deemed to be a three-monthly employee and, notwithstanding any other provision in this Act, his employment may be terminated at any time after three months' notice in writing has been given—

(a) By the Commission to the officer on the ground of redundancy or to effect retirement in accordance with retirement policy; or

(b) By the officer to the Commission.

(2) The Commission may forthwith terminate the employment of any officer other than an apprentice who gives less than three months' notice under this section.

(3) This section shall not derogate in any manner from any other provisions of this Act conferring power on the Commission to dismiss officers.

Cf. 1912, No. 23, s. 51 40

Remuneration, Classification, and Grading

41. Occupational classes and salary scales—(1) The permanent staff of the Public Service shall consist of officers and probationers.

5 (2) The Commission shall prescribe occupational classes according to the nature of the duties required to be performed by the permanent staff:

10 Provided that the Commission may prescribe such miscellaneous occupational classes otherwise than according to the nature of the duties as may be necessary to enable it to classify officers and probationers where so few are engaged in any occupation that the prescription of an occupational class according to the nature of their duties would not be warranted:

15 Provided also that to facilitate the administration of this section occupational classes may be grouped together in any related field.

20 (3) In prescribing any occupational class in accordance with the provisions of subsection (2) of this section, the Commission may specify that no person shall be eligible for appointment to the class unless he has such minimum educational or other qualifications as are appropriate to the duties normally performed by members of that class, and may prescribe other conditions not inconsistent with this Act.

25 (4) The Commission shall subdivide each occupational class into grades according to its assessment of the relative levels of responsibility and skills required to be exercised by officers and probationers of the occupational class, and shall prescribe a salary rate and a maximum salary rate and annual incremental steps for each such grade not exceeding the amount for the time being prescribed by Order in Council as the maximum amount that the Commission may prescribe.

30 (5) In prescribing salary rates or scales of salary rates in accordance with subsection (4) of this section or wage rates or scales of wage rates in accordance with section 47 of this Act the Commission shall have regard to—

35 (a) The levels of remuneration received by, and other matters affecting the remuneration of, persons doing comparable work in employment outside the Public Service:

40 Provided that the rates may be adjusted where deemed proper, having regard to wage and salary rates paid in respect of other occupational classes in the Public Service:

- (b) The need to maintain adequate margins for skill and responsibility:
- (c) The need to provide sufficient inducement for recruitment:
- (d) In cases where comparison with the level of remuneration received by persons doing comparable work in employment outside the Public Service is not possible, or where conditions other than remuneration are such as to prevent a fair comparison, the wage and salary rates paid in respect of other occupational classes in the Public Service: 5
- (e) Such other matters as may be agreed between the Commission and the service organisations concerned. 10

(6) In addition to the powers to prescribe salary rates conferred by this section, the Commission shall have power to prescribe for the Public Service annual and special leave, public holidays, ordinary hours of work, and the period to be worked before overtime rates become payable; rates of remuneration and conditions in respect of minimum earnings, overtime, travelling time, shift work, night work, and special duty, and in respect of work on Saturdays, Sundays, and public holidays, and at any other time outside the ordinary hours of duty; tool allowances; and the terms and conditions on which industrial clothing may be issued. 15

(7) The power to prescribe the matters set out in subsection (6) of this section shall not derogate in any manner from any other powers conferred by any other provision of this Act. 25

(8) The Commission shall exercise its power to prescribe occupational classes, grades, and salary rates and scales thereof, and terms and conditions of employment, by issuing Public Service determinations; and every such determination shall be published in the *Public Service Official Circular*. Every such determination shall come into force on a date to be specified therein in that behalf, and such date may be before, the same as, or after the date on which the determination is made, and if no such date is specified the determination shall come into force on the day on which it is made. 30

(9) At any time within two months (or such extended time as the Commission may in any case notify in the *Public Service Official Circular*) after the date of the publication of any determination made under any of the provisions of subsections (2), (3), (4), and (6) of this section or under paragraph (a) of subsection (6) of section 42 of this Act or 35

under section 49 of this Act, the New Zealand Public Service Association (Incorporated) or any service organisation whose members are affected by the determination, may apply in writing to the Government Service Tribunal for an order
5 varying the determination.

(10) Any service organisation whose members are affected may apply to the Commission for the establishment of an occupational class in accordance with subsections (2), (3), (4), and (6) of this section, or for a review of any of the
10 matters specified in subsections (2), (3), (4), and (6) of this section relating to any occupational class at any time after the expiration of ten months from the date of the issue of any Public Service determination or Public Service order issued by the Tribunal relating to that class; and, if no determination
15 relating to that class is issued within two months after the date of the lodgment of the application, the application may be forwarded to the Tribunal by the service organisation and in that event shall be deemed to be an application under sub-
section (9) of this section for an order varying the determina-
20 tion or order for the time being governing the salary rates and conditions of that class.

(11) The Government Service Tribunal shall have jurisdiction to hear and determine any application made to it under subsection (9) or subsection (10) of this section, and may
25 make an order varying or confirming the determination. In arriving at its decision the Tribunal shall have regard to the matters specified in subsection (5) of this section in relation to salary rates and scales of salary rates.

(12) The Government Service Tribunal shall not have
30 jurisdiction to alter any salary or wages rate prescribed in a determination which exceeds such amount or rate as may from time to time be fixed by Order in Council made in that behalf under this Act.

(13) Whether or not any application has been made to the
35 Government Service Tribunal under subsection (9) or sub-
section (10) of this section, the Commission may at any time vary or cancel any determination, and in that event any proceedings pending before the Tribunal in respect of that determination shall continue with such modifications as may be
40 rendered necessary by any such amendment.

New

(14) Every principal order or determination made under the Government Service Tribunal Act 1948 in respect of employees of the Public Service, so far as it was subsisting immediately before the commencement of this Act, shall continue in force as if it had been made under this Act, and shall be deemed to be a Public Service order or a wage worker order or a Public Service determination or a wage worker determination, as the case may require. Notwithstanding anything to the contrary in the Government Service Tribunal Act 1948, after the commencement of this Act the only orders that may be made by the Tribunal in respect of employees in the Public Service shall be Public Service orders and wage worker orders made in accordance with the provisions of this Act, and the only determinations that may be made by the Commission in respect of employees in the Public Service shall be Public Service determinations and wage worker determinations made in accordance with the provisions of this Act.

42. Ruling rates surveys—(1) A survey of ruling rates of remuneration, and (as far as is practicable) conditions of employment, in occupations outside State Departments, shall be made during February in each year or, after consultation with service organisations whose members are likely to be affected thereby, at such other time as may be deemed more appropriate, to enable the Commission to make such adjustments in rates of remuneration as may be considered necessary to maintain fair relativity between remuneration and the conditions of employment for any occupational class or classes and group or groups of wage workers in the Public Service, and the remuneration and conditions of employment for the same or an equivalent occupational class or classes and group or groups of wage workers outside State Departments.

(2) Any general order of the Court of Arbitration made under any regulations under the Economic Stabilisation Act 1948 shall be applied by the Commission, for the purposes specified in subsection (1) of this section, to the Public Service as from the date on which it took effect, to the extent that such order has been applied generally outside State Departments as shown by a ruling rates survey, which shall be taken three months after the date on which that order took effect, or at such other date as may be agreed upon between the Commission and the service organisations consulted under subsection (3) of this section.

New

5 (3) The number of occupations to be surveyed and the scope and mode of making each survey shall be determined after consultation with the service organisations whose members are likely to be affected thereby:

10 Provided that this subsection shall not operate to prevent the Government Statistician from conducting surveys of ruling rates of remuneration and conditions of employment at such intervals and of such scope as he thinks fit in accordance with the provisions of section 3 of the Statistics Act 1955.

(4) The results of each such survey shall be made known to the Commission and to the service organisations which were consulted in respect of that survey in accordance with subsection (3) of this section.

15 (5) The Commission shall consider the results of each ruling rates survey and shall consult with the service organisations affected thereby.

20 (6) Without restricting any other power conferred on it by this Act, it is hereby declared that the Commission may, for the purposes of this section, issue a Public Service determination or a wage worker determination which specifies—

(a) The occupational classes or groups of wage workers in the Public Service to which adjustments are to be made; and

25 (b) Such adjustment in the rates of remuneration and conditions of employment of each such occupational class or group of wage workers as may be considered necessary; and

30 (c) The date on which the determination is to come into force; and in fixing any such date the Commission may provide for adjustments to be applied retrospectively to a date which will ensure that employees in the Public Service are not at a disadvantage, compared with persons outside the Service by reason of changes in ruling rates that have taken place since the date of the last survey. Where the determination results from a survey made in accordance with subsection (2) of this section, the adjustments shall be applied retrospectively to the date on which the general order of the Court of Arbitration took effect.

35

40

New

- (7) Any service organisation that is consulted in accordance with subsection (3) of this section—
- (a) May apply to the Government Service Tribunal in accordance with subsection (9) of section 41, or subsection (7) of section 49, of this Act for an order varying any such determination so far as it relates to any of the matters specified in subsection (6) of this section: 5
- (b) May, if the Commission does not issue a determination in accordance with subsection (6) of this section within three months after the date on which the results of any ruling rates survey are made known, and notwithstanding the provisions of subsection (10) of section 41, or subsection (7) of section 49, of this Act, lodge with the Government Service Tribunal a claim in accordance with subsection (8) of this section based on the evidence disclosed by the ruling rates survey, and may apply for an order confirming the claim. 10 15 20
- (8) Every such claim shall specify—
- (a) The occupational classes or groups of wage workers in the Public Service in respect of which adjustments are desired; and
- (b) The adjustments in the rates of remuneration and conditions of employment of each such occupational class or group of wage workers which are claimed to be necessary to maintain their fair relativity with the levels of remuneration and conditions of employment prevailing in comparable occupations outside State Departments as indicated by the ruling rates survey; and 25 30
- (c) The date on which it is desired that the adjustments shall become effective.
- (9) In any application made pursuant to subsection (7) of this section, the Tribunal shall, subject to subsections (11) and (12) of section 41 of this Act, have jurisdiction to hear and determine the matter. 35

43. Classification, grading, and salaries of permanent staff—(1) The Commission shall place every officer and probationer in an occupational class, and shall also place every officer and probationer in a grade in the appropriate occupational class according to the level of responsibility and skill required to be exercised in the performance of the duties allocated to him. Salary shall be payable to each officer and probationer according to his grading, and on promotion, unless the Commission otherwise determines, an officer or probationer shall be awarded the minimum salary of the new grade, but not less than his previous salary, and proceed by annual increments to the maximum salary prescribed for the grade.

(2) A salary in excess of the amount for the time being prescribed by Order in Council as the maximum amount that the Commission may prescribe may be paid to any officer or probationer if salary is provided in the annual estimates and appropriated by Parliament.

(3) From the date of the commencement of this Act until the Commission has classified and graded all officers and probationers in accordance with this section, the enactments repealed by this Act so far as they relate to classification and grading shall continue, notwithstanding their repeal, to apply to all officers and probationers not for the time being graded in accordance with this section as if this Act had not been passed.

Cf. 1912, No. 23, ss. 17, 19

44. Continuous review of classification and grading—

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

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

Provided that, in reviewing the salary scale or grading pattern of any occupational class, the Commission shall have regard to subsection (5) of section 41 of this Act:

Provided also that, if adjustments are to be made as a result of a review taken in accordance with this paragraph, the provisions of section 41 of this Act shall apply:

- (b) Ensure that all positions are placed in the occupational class most closely related to the nature of the duties involved:
- (c) Ensure that every position in each occupational class is placed in a grade appropriate to the level of responsibility and skill required in the discharge of its functions. 5

(2) If the grading of a position is altered in accordance with paragraph (c) of subsection (1) of this section and the new grading does not coincide with the grading of the officer for the time being holding the position the Commission may either appoint the holder to the position at its new grading, or it may declare the position vacant and fill it in any manner authorised by this Act. 10

(3) Any regrading pursuant to paragraph (c) of subsection (1) of this section shall take effect from and including such date as the Commission shall specify. 15

(4) An officer who is performing duties of a temporary nature or who is temporarily performing the duties of a permanent position or who is temporarily absent from his usual duties may be given a higher grading by the Commission as if he were performing such permanent duties as in the opinion of the Commission might have been assigned to him had he been available to perform them. 20

45. Review of grading—(1) Every officer shall have the right to apply to the Commission in writing for a review of the grading of the position which he occupies, if he has not applied to a Classification and Grading Committee constituted under section 46 of this Act within the period of five years immediately preceding the application: 25 30

Provided that nothing in this subsection shall prevent an officer from making representations to the Commission at any time on the grading of the position.

(2) On receipt of any application under subsection (1) of this section the Commission shall review the case, and shall notify the officer in writing of the result of the review. 35

(3) If the officer is not satisfied with any decision of the Commission given under subsection (2) of this section, he may, within fourteen days after the date on which that decision has been notified, request that his application be referred for consideration by a Classification and Grading Committee constituted under section 46 of this Act. 40

5 46. **Classification and Grading Committees**—(1) Subject to the provisions of this section, the Commission may from time to time appoint Classification and Grading Committees constituted as provided in this section, and every appointment
5 of such a Committee shall be notified in the *Public Service Official Circular*.

(2) Each such Committee shall consist of three officers or retired officers, of whom one shall be appointed by the Commission as Chairman after consultation with the New
10 Zealand Public Service Association (Incorporated), and one shall be appointed on the nomination of the New Zealand Public Service Association (Incorporated).

(3) Each such Committee shall have power to investigate in such manner as it thinks fit and make a recommendation
15 to the Commission regarding:

(a) Any application lodged under subsection (1) of section 45 of this Act; and

(b) Any other matter relating to classification or grading referred to it by the Commission.

20 (4) Except as otherwise provided in this Act and in any regulations made under this Act, each such Committee shall determine its own procedure.

(5) Each such Committee may receive in evidence any statement, document, information, or matter that may in its
25 opinion assist it to deal effectively with the matter before it, whether or not the evidence is otherwise admissible in a Court of law.

(6) The officer making the application for a review shall be entitled to be present, and may be represented by counsel,
30 or by an officer, or by an employee of the New Zealand Public Service Association (Incorporated) or of any other service organisation.

(7) Proceedings before any such Committee shall not be held bad for want of form. No appeal shall lie against any
35 recommendation of any such Committee, nor, except on the ground of lack of jurisdiction, shall any proceeding or decision of any such Committee be liable to be challenged, reviewed, quashed, or called in question by any Court.

(8) The Commission shall notify the applicant of any
40 recommendation made by any such Committee in respect of his application, together with the Commission's decision thereon.

(9) If the Commission's decision is contrary to the Committee's recommendation, the applicant may, within fourteen days of the date of notification to him of the Commission's decision, appeal therefrom in accordance with paragraph (b) of subsection (1) of section 64 of this Act; and the decision of the Appeal Board shall be final. 5

47. Successful application for a review of grading—Where the Commission agrees to change the grading of a position as a result of a decision made under subsection (2) of section 45, or under subsection (8) of section 46, of this Act, or where the Appeal Board upholds the application of the appellant under subsection (9) of section 46 of this Act, the Commission may either appoint the applicant to the position at its new grading, or it may declare the position vacant and fill it in any manner authorised by this Act. 10 15

48. Temporary salaried employees—(1) The Commission may engage such temporary salaried employees as may from time to time be required in the public interest, and may dismiss any person so engaged with not less than one week's notice, or, in the case of misconduct, without notice. No action shall lie in any Court in respect of the dismissal of any temporary salaried employee. 20

(2) Temporary salaried employees shall be paid such salaries and be subject to such conditions of employment as may from time to time be determined by the Commission. 25

(3) The Commission shall review all temporary salaried employees annually, and shall satisfy itself in respect of each such employee that his services continue to be required in the public interest.

49. Wage workers—(1) Where in the opinion of the Commission any work required to be done by any Department of the Public Service does not warrant the employment of salaried staff by reason of its temporary, fluctuating, or special nature, the Commission may authorise the engagement of wage workers by the Department. 30 35

(2) Wage workers may be engaged and, with the appropriate notice, if any, discharged by the persons for the time being holding such positions as the permanent head designates from time to time for that purpose; and any such person may, with the permission of the permanent head, authorise any responsible employee under his control to engage and discharge wage workers subject to his approval. 40

(3) The Commission may from time to time make determinations, to be known as wage worker determinations, prescribing all or any of the following matters:

- 5 (a) Conditions to be met for engagement:
- (b) Wage rates:
- (c) Annual and special leave and the days to be observed as public holidays by wage workers:
- (d) Ordinary hours of work and the period to be worked before overtime rates become payable:
- 10 (e) Rates of remuneration and conditions in respect of minimum earnings, overtime, travelling time, shift work, night shift, and special duty or conditions, and in respect of work on public holidays and at any time outside the ordinary hours of work:
- 15 (f) Separation allowances, locality allowances, dirty work allowances, and other allowances relating to conditions of work:
- (g) Tool, travelling, lodging, camp, and meal allowances:
- 20 (h) The terms and conditions on which industrial clothing may be issued.

(4) In making any wage worker determination the Commission shall have regard to the matters specified in subsection (5) of section 41 of this Act.

25 (5) Every wage worker determination shall come into force on a date to be specified therein in that behalf, and that date may be before, the same as, or after the date on which it is made, and if no such date is specified, the determination shall come into force on the day on which it is made.

30 (6) The Commission shall forthwith upon the making of any wage worker determination furnish a copy thereof to any service organisation whose members are affected thereby, and any such service organisation may, within two months after the date on which it is made or within such extended
35 time as the Commission may in any case allow, apply in writing to the Government Service Tribunal for an order varying the determination.

40 (7) Any service organisation whose members are affected by any wage worker determination or by any order of the Government Service Tribunal confirming or varying any such determination may apply to the Commission for a review of the determination or order at any time after the expiration of ten months from the date on which the determination or order was made, and, if no determination is made by the

Commission within two months after the date of the lodgment of the application, the application may be forwarded to the Tribunal by the service organisation, and in that event shall be deemed to be an application under subsection (6) of this section for an order varying the determination or order in respect of which the review was sought. 5

(8) The Government Service Tribunal shall have jurisdiction to hear and determine any such application, and may make a wage worker order varying or confirming the determination. 10

(9) Whether or not any application has been made to the Government Service Tribunal under subsection (6) or subsection (7) of this section, the Commission may at any time vary or cancel any wages and conditions determination; and in that event any proceedings pending before the Tribunal in respect of that determination shall continue with such modifications as may be rendered necessary by any such amendment. 15

(10) The Commission may issue such special instructions or prescribe such matters not inconsistent with this section as it thinks fit in respect of wage workers. 20

(11) Nothing in this Act other than this section, subsection (5) of section 41, and sections 42, 69, 72, 75, and 76 shall apply in respect of wage workers engaged pursuant to this section. 25

(12) All temporary workmen and other persons who at the commencement of this Act are employed under regulation 130 of the Public Service Regulations 1950 shall be deemed to be wage workers engaged under this section.

50. Salary increments—(1) Unless otherwise prescribed in any scale of salaries, the increments within any class and grade shall be annual increments and shall not accrue to any salary until the employee in receipt thereof has received the same for a period of twelve months. 30

(2) The right to receive an annual increment shall depend upon the efficiency and conduct of the employee; and, if any permanent head is of the opinion that an employee should not receive an increment, he shall advise the Commission accordingly, and payment of the increment shall be withheld pending the determination of the Commission as to whether the increment shall be paid. 35 40

(3) Notwithstanding the foregoing provisions of this section, it shall be lawful for the Commission to allow to any employee in any year an increment or increments in excess of that to which he would otherwise have been entitled or from a date
5 earlier than the date on which the annual increment would otherwise have accrued if in either case in the opinion of the Commission the employee is entitled to special consideration.

Cf. 1912, No. 23, s. 25

51. Allowances for adult and married employees—(1) The
10 Commission may from time to time, by a determination published in the *Public Service Official Circular*, determine the minimum rates of remuneration for adult employees and for married employees or for any class or classes of them.

(2) Where the minimum rate of remuneration determined
15 under this section exceeds the rate of salary or wages otherwise payable to an employee, he shall receive in addition to his salary an allowance of an amount equal to the difference between the minimum remuneration and his salary or wages.

Cf. 1938, No. 13, s. 10

20 **52. Allowances and grants—**The Commission may approve the payment of allowances and grants to employees or other persons in accordance with regulations made under this Act.

Code of Conduct

53. Private employment—(1) Except with the express per-
25 mission of the Commission (which may at any time be withdrawn), no employee shall—

(a) Accept or continue to hold or discharge the duties of
30 any other paid office outside the Public Service, or engage (whether as principal or agent) or be employed in any other paid occupation outside the Public Service:

(b) Accept any money, fee, gratuity, or reward of any kind
for services rendered otherwise than in the Public Service.

35 (2) Except as provided in subsection (3) of this section, nothing in this section shall be construed to prevent an employee from becoming a member or shareholder only of any incorporated company, or of any company or society of persons registered under any Act.

(3) If the Commission has reason to believe that an employee has any financial interest (including any equitable interest) in any undertaking, being an interest which is in the opinion of the Commission incompatible with the due and proper discharge of his duties as an employee of the Public Service, the employee may be required to notify the Commission whether such an interest exists, and the Commission (whether or not any such notification has been received) may require that all interests of a specified nature shall be disposed of. 5

(4) The Commission may, by notice in the *Public Service Official Circular*, exempt any class of employees or any class of interest or employment from the provisions of this section, and any such exemption may be absolute or subject to any conditions specified in the notice. Any such exemption may at any time in like manner be varied or cancelled by the Commission. 10 15

Cf. 1912, No. 23, s. 59; S.R. 1950/216, reg. 24

54. Fees for official services—(1) No fee, reward, or remuneration of any kind whatsoever, beyond his salary, shall be received and kept for his own use by any employee for the performance of any service for the Government, unless specially authorised by the Commission. 20

(2) Any employee who is required in the course of his duty to perform any service rendered otherwise than in the Public Service for which a charge would lawfully be payable shall report the fact to his permanent head, who shall decide what amount should be charged for that service; and the amount shall be paid into the Public Account or into the account of the Department concerned, unless the Commission otherwise directs. 25 30

Cf. S.R. 1950/216, reg. 22

55. Conviction for offences—(1) An officer who is charged with having committed any offence punishable by imprisonment for a term of one year or more, whether on indictment or on summary conviction, may be transferred to other duties or suspended from duty by the Commission; and if he is convicted (whether or not he has been suspended) one or more of the following penalties may be imposed on him by the Commission: 35 40

(a) He may be dismissed:

(b) He may be deemed to have committed an offence under this Act and required to suffer such penalty less than dismissal as the Commission may impose:

- (c) He may be placed on probation for such period not exceeding two years as the Commission may determine, when the provisions of this Act relating to probationers shall apply except that he shall not be deemed to have been newly appointed at the time he is placed on probation.
- (2) An officer shall not be paid any salary or any amount in respect of loss of earnings in respect of any period of suspension from duty under this section unless the Commission otherwise directs or he is acquitted of the charge.
- (3) Nothing in section 56 of this Act shall apply with respect to any action taken under this section.

56. Offences with which employees may be charged—

- Every employee commits an offence against this Act who—
- 15 (a) By any act or omission fails to comply with the requirements of this Act or of any regulation thereunder or of any official instruction given under the authority of the Commission or of his permanent head:
- 20 (b) In the course of his duties disobeys, disregards, or makes wilful default in carrying out any lawful order or instruction given by any person having authority to give the order or instruction, or by word or conduct displays insubordination:
- 15 (c) Is negligent, careless, indolent, inefficient, or incompetent in the discharge of his duties:
- (d) Behaves in a manner calculated to cause unreasonable (inconvenience or distress to other employees) distress to other employees or to affect adversely the performance of their duties:
- 30 (e) Uses intoxicating liquors or drugs to excess or in such manner as to affect adversely the performance of his duties:
- (f) Improperly uses property or stores for the time being in his official custody or under his control, or fails to take reasonable care of any such property or stores:
- 35 (g) Otherwise than in the proper discharge of his duties (except with the approval of the Minister in charge of his Department) directly or indirectly discloses or for private purposes uses any information acquired by him either in the course of his duties or in his capacity as an employee of the Public Service:
- 40 (h) Absents himself from his office or from his official duties during hours of duty without leave or valid excuse, or is habitually irregular in the time of his arrival or
- 45 departure from his place of employment:

- (i) Is guilty of any improper conduct in his official capacity, or of any other improper conduct which affects adversely the performance of his duties or brings the Public Service into disrepute.

Cf. 1927, No. 60, s. 11 (1)

5

57. Minor offences—(1) If the permanent head (which expression for the purposes of this section includes any employee acting with the authority of the permanent head) has reason to believe that an officer of his Department has committed an offence against this Act which the permanent head regards as a minor offence, he may acquaint the officer of the alleged offence and require him to furnish an explanation; and, if after considering the explanation the permanent head is satisfied that the offence has been proved, he may caution or reprimand the officer or order that a sum not exceeding ten pounds be deducted from his salary. Any action taken under this section shall forthwith be reported to the Commission by the permanent head; and, subject to the following provisions of this section, the permanent head's decision shall be final.

(2) Any officer aggrieved by a decision of his permanent head under this section may appeal therefrom to the Commission in writing so that his appeal is received by the Commission within fourteen days after the date on which the decision of the permanent head has been communicated to him.

(3) Upon any such appeal the Commission shall confirm, annul, or vary the penalty imposed by the permanent head, and the Commission's decision shall be final:

Provided that the fine imposed for a minor offence shall not exceed ten pounds.

Cf. 1927, No. 60, s. 11 (2)

58. Major offences—(1) If the permanent head (which expression for the purposes of this section includes any employee acting with the authority of the permanent head) has reason to believe that any officer of his Department has committed an offence to which section 56 of this Act applies (other than a minor offence) he may (and if so required by the Commission shall) forthwith serve the officer with a written copy of the charge against him, in which event the following provisions of this section will apply.

(2) The officer concerned 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 charge, and shall also be required to give to the permanent head in writing such explanation as will enable proper consideration to be given to the alleged offence. If a denial of the truth of the charge is not made within the required time, the officer shall be deemed to have admitted the truth thereof.

(3) The permanent head shall forthwith forward to the Commission a copy of the charge and any replies thereto, together with his own report on the matter and such other reports as he may have obtained, and the Commission shall thereupon proceed to consider and determine the matter.

(4) If the Commission is of the opinion that the charge should be investigated by a member of the Commission, or by some other person or persons, specially appointed for the purpose, it may make such an appointment; and every person so appointed shall conduct an inquiry into the matter.

(5) Where a charge is made against an officer under this section, any person or persons appointed under subsection (4) of this section, shall have the same powers as the Commission 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 Commission his opinion thereon, and forward to the Commission with his report a copy of all evidence received by him.

(6) If the truth of the charge is admitted by the officer concerned, or if the Commission after consideration of the reports relating to the charge and any reply or explanation furnished by the officer, and after such further investigation or inquiry (if any) as it considers necessary, is satisfied as to the truth of the charge, it may, after taking into account the Service record of the officer, impose one or more of the following penalties—

- (a) Caution and reprimand the officer:
- (b) Order to be deducted by way of penalty from the salary of the officer such sum not exceeding two hundred pounds as it thinks fit:

- (c) Transfer him to other duties:
 - (d) Reduce the rate of salary of the officer (with or without a consequent reduction in grading):
 - (e) Dismiss the officer from the Public Service. 5
- (7) As soon as practicable after the conclusion of any investigation or inquiry under this section the Commission shall, by notice in writing, inform the officer concerned of the Commission's decision and of the penalty (if any) imposed by it.
- (8) If any charge is established under the provisions of this section, and the Commission is satisfied that any omission or default involved in that finding resulted in ascertained or assessable damage to Crown property or loss to the Crown, the Commission, with the concurrence of the Controller and Auditor-General, may direct the recovery of an amount not exceeding the amount of the said damage or loss in addition to any penalty that may lawfully be imposed under subsection (6) of this section, and the amount directed to be recovered shall be deducted from the salary or any money payable by the Crown to the officer in such manner as the Commission may direct. 10 15 20
- (9) Any officer against whom a charge is made or contemplated under this section may, pending the hearing and determination of the charge, be suspended or transferred to other duties by the permanent head, or by the controlling officer having authority over the officer. 25
- (10) Every suspension under subsection (9) of this section shall be forthwith reported to the Commission, and may be removed only by the Commission.
- (11) Except with the express approval in writing of the Commission, no person who has been suspended under the foregoing provisions of this section shall be entitled to receive any salary or payment for loss of earnings in respect of the period of suspension if the charge made against him is sustained on inquiry or investigation as hereinbefore provided. 30 35
- (12) An officer shall not be paid any salary or any amount in respect of loss of earnings in respect of any period of suspension from duty under this section unless the Commission otherwise directs or he is acquitted of the charge.
- (13) At any inquiry or investigation held under this section with respect to any charge made against an officer, the officer shall be entitled to be represented by counsel or an agent. 40

(14) In any case where, after inquiry or investigation, the charges made against an officer are held not to have been proved, the Commission may allow the officer the whole or such part as it thinks fit of the legal costs and other expenses actually incurred by the officer.

(15) This section shall not derogate in any manner from the powers and rights conferred by sections 38, 39, and 40 of this Act.

59. Offences by permanent head—If in any case the Commission has grounds to suspect that any permanent head may have committed an offence to which section 56 of this Act applies, it may notify the permanent head accordingly and institute an inquiry. In any such case the provisions of section 58 of this Act shall apply with the necessary modifications, references in that section to the permanent head being construed, where necessary for the purposes of this section, as references to the Commission.

Cf. 1927, No. 60, s. 12

60. Unauthorised absence—(1) Notwithstanding the provisions of sections 56, 57, and 58 of this Act, an employee who absents himself from duty, or who fails to return to duty, and (in either case) continues to be absent without permission for a period of not less than four weeks shall be deemed to have forfeited office:

Provided that notice of the effect of this section shall 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 before the expiration of one week from the date on which the notice is so sent.

(2) If the employee subsequently satisfies the Commission that there was a valid reason for his absence and for his failure to inform the Commission earlier of that reason, the Commission may reinstate the employee; and in such a case the employee shall be deemed not to have forfeited office, but to have been on leave from the Public Service during the period of absence.

PART IV

PUBLIC SERVICE APPEALS

61. Constitution of Appeal Board—(1) There is hereby established a Board to be called the Public Service Appeal Board. 5

(2) The Board shall consist of—

(a) A Stipendiary Magistrate or a retired Stipendiary Magistrate or an officer or a retired officer or other person who shall be the Chairman of the Board:

(b) An officer or a retired officer, to be appointed as the official member on the nomination of the Commission: 10

(c) Two persons, being officers or retired officers, to be appointed as service members on the nomination of the New Zealand Public Service Association (Incorporated): 15

Provided that two officers employed in the same Department shall not be so appointed.

(3) The members of the Board shall be appointed by the Minister, and shall hold office for a term not exceeding three years, and any such member may from time to time be re-appointed: 20

Provided that the Minister shall not appoint the Chairman before attempting to gain the agreement of the Commission and the New Zealand Public Service Association (Incorporated) to the proposed appointee. 25

(4) Notwithstanding the provisions of subsection (3) of this section, every member of the Board shall continue to hold office until his successor is appointed.

(5) The two service members shall not be entitled to sit as members of the Board at the same time, and shall mutually agree as to which of them shall act as a member of the Board at any particular appeal. In default of agreement in any case, the Chairman shall determine by lot the person so to act. 30

(6) No member shall act on the Board in any appeal affecting an officer of the Department in which the member is an officer, or in any appeal affecting himself. 35

(7) If any member of the Board dies, or by notice in writing addressed to the Commission resigns his office, or refuses or neglects without sufficient cause to attend any duly appointed meeting of the Board or (being a service member) becomes employed in the Department in which the other service member is employed, then and in any such case his seat shall 40

become vacant, and the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made.

(8) Subject to the provisions of subsection (10) of this section, the Commission may from time to time appoint as the deputy of the Chairman or of the official member of the Board a person who is eligible for appointment to the office of the Chairman or member whose deputy he is to be. Any such deputy shall act, for such time as the Commission shall specify, for the member whose place he takes whenever that member—

- (a) Fails to attend a duly appointed sitting of the Board;
or
- (b) By notice in writing addressed to the Commission intimates that he is unable from any cause to act as a member of the Board; or
- (c) From any cause whatever is not available as a member of the Board.

(9) Subject to the provisions of subsection (10) of this section, in the event of the death or resignation of the Chairman or of the official member of the Board, the Commission may from time to time appoint a person who is eligible for appointment to the office to act, for such time as the Commission shall specify, in the place of the Chairman or official member who has so died or resigned. No person appointed under this subsection shall so act after the expiration of three months after the date of the death or sooner resignation of the Chairman or official member in whose place he is appointed to act.

(10) The Commission shall not so appoint a deputy of the Chairman or a person to act in the place of the Chairman without the consent of the New Zealand Public Service Association (Incorporated), and if that association, after being given reasonable opportunity to give its consent, fails or refuses to do so in any case, the appointment of a deputy of the Chairman or of a person to act in the place of the Chairman may be made by the Minister with the same effect as if it had been duly made by the Commission under subsection (8) or subsection (9) of this section.

(11) In the event of both service members of the Board being absent or unable for any reason to attend any duly appointed meeting of the Board or to act thereon for the hearing of any particular appeal, an officer or retired officer, to be nominated by the New Zealand Public Service Association (Incorporated), shall act in place of the service member

of the Board at the meeting or at the hearing of the appeal, as the case may be, and that officer or retired officer shall for the purposes of this Act be deemed to be a duly appointed service member of the Board for the purposes of the meeting or of the hearing of the appeal.

(12) Notwithstanding anything in the foregoing provisions of this section, the Board, if in its opinion any appeal involves consideration of matters of a professional, technical, or specialised nature, may, with the consent of the parties to the appeal, appoint any person who in its opinion has expert knowledge of those matters to be an assessor for the purposes of the appeal; and the assessor shall sit with the Board and in all respects act as an extra member thereof for the hearing and determination of the appeal, except that the assessor shall have no vote in the determination of the appeal.

(13) No appointment of a deputy Chairman or deputy member or acting member or of an assessor under this section shall in any proceedings be called in question on the grounds that the occasion for the appointment had not arisen or had ceased.

(14) The Board may state a case for the opinion of the Supreme Court on any question as to the jurisdiction of the Board or on any question of law arising in proceedings before it.

(15) The Chairman and each other member of the Board of Appeal holding office at the commencement of this Act shall be deemed to have been appointed to the Public Service Appeal Board under the provisions of this Act for the balance of the term for which he was originally appointed.

Cf. 1952, No. 4, s. 2; 1959, No. 103, ss. 2, 3

62. Special Appeal Board—(1) All appeals by officers under this Act or any other enactment shall be heard either by the Appeal Board established under section 61 of this Act or by any Special Appeal Board constituted in the same manner, except that the Chairman and members of every Special Appeal Board shall hold office during the pleasure of the Minister.

(2) Subject to the provisions of this section, all the provisions of this Act or any other enactment relating to the Appeal Board established under section 61 of this Act and its Chairman and members shall, so far as they are applicable and with any necessary modifications, apply with respect to any Special Appeal Board and its Chairman and members.

(3) The fact that any person is a member of the Appeal Board constituted under section 61 of this Act or of any Special Appeal Board constituted under this section shall not render him ineligible for appointment as a deputy of a member or as an acting member of any other Board.

(4) The members of the Special Board of Appeal constituted under section 2 of the Public Service Amendment Act 1952 who hold office at the commencement of this Act shall be deemed to have been appointed as a Special Appeal Board under this section.

Cf. 1952, No. 4, s. 2

63. Remuneration of Board members—(1) The Public Service Appeal Board and every Special Appeal Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid out of money appropriated by Parliament for the purpose to the Chairman and members of the Public Service Appeal Board and of every Special Appeal Board (other than a person in receipt of a salary in respect of full time employment in any branch of the State services) remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

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

(a) The promotion of any officer, or the appointment of any person who is not an officer, to any position on the permanent staff of the Public Service, if (in either case) the appointment of the appellant to the position would have involved his promotion:

Provided that no officer shall have any right of appeal in respect of any such promotion or appointment if the promotion or appointment was to a vacancy which had been notified under this Act, unless the officer was an applicant for appointment thereto:

Provided also that any such appeal shall be deemed to have lapsed if, before the appeal is determined, the appellant is promoted to an equivalent grade, or the promotion or appointment that is the subject of the appeal is cancelled, or if the officer promoted or the person appointed dies, or vacates or renounces or becomes incapable of taking up the position or grade:

- (b) A decision by the Commission contrary to the recommendation of a Classification and Grading Committee on an application by an officer under subsection (9) of section 46 of this Act:
- (c) Any penalty imposed by the Commission on the officer under section 55 or section 58 of this Act, or any decision in respect of a charge made against an officer under section 58 of this Act: 5
- (d) Any amount directed by the Commission to be recovered under section 58 of this Act: 10
- (e) Any decision of the Commission to transfer the officer from any place in New Zealand to any place outside New Zealand:
- (f) Any decision of the Commission to transfer the officer from one locality to another within New Zealand: 15
 Provided that an appeal under this paragraph shall lie only on the ground of extraordinary personal hardship:
 Provided also that the fact that an appeal is pending under this paragraph shall not relieve the officer 20
 of his obligation to comply with the decision of the Commission pending a decision on the appeal, unless the Chairman of the Public Service Appeal Board, on application made to him in that behalf, and on being satisfied that a prima facie case of 25
 such hardship is established directs that the officer shall not be so transferred pending the decision of the appeal:
- (g) Any other decision in respect of which a right of appeal is expressly conferred by this Act or any other Act. 30
- (2) Notwithstanding anything in subsection (1) of this section, no appeal by any officer shall lie against the promotion or appointment of any officer to or in any office or position specified in the Third Schedule to this Act, howsoever that office or position is for the time being 35
 designated. For the purposes of this subsection and of section 29 of this Act, a certificate by a Commissioner as to any change in the designation of any office or position specified in the said Third Schedule shall be conclusive evidence of the facts stated in the certificate regarding that change. 40

(3) Notice of appeal under subsection (1) of this section and of the grounds of the appeal shall be forwarded to the Commission in writing in time to be received by the Commission within fourteen days after the date on which the
5 decision has been notified to the officer concerned, or within such extended time as the Appeal Board may in any case allow after good and sufficient reason has been shown in writing by the appellant. An appellant shall be deemed to
10 have complied with the provisions of this subsection if he establishes to the satisfaction of the Appeal Board, by the production of corroborative evidence, that the notice of appeal was dispatched to the Commission in time for it to have been delivered at the office of the Commission in the normal course of postal delivery on or before the last day fixed
15 for the receipt of the notice.

(4) The Appeal Board shall have jurisdiction to hear and determine every such appeal, and for this purpose to summon witnesses, including (if necessary) the provisional appointee, and to examine the witnesses on oath or otherwise. On any
20 such appeal the Appeal Board may receive such evidence as it thinks fit, and receive any statement, document, information, or matter which in the opinion of the Board may assist it to deal with the matters before it, whether or not the same would be admissible in a Court of Law.

(5) In deciding any appeal against an appointment the
25 Appeal Board may allow or disallow the appeal, or may hold that the appointment is not sustained and direct that it be reviewed by the Commission, which shall have regard to such matters as the Board specifies in connection with its direction.
30 Where an appointment is directed to be so reviewed the Commission shall cancel the appointment and shall fill the resulting vacancy in any manner authorised by this Act. Where the appeal is allowed, the Commission shall forthwith appoint the successful appellant to the position.

(6) Where the appeal is against any penalty imposed by
35 the Commission on any officer under section 55 or section 58 of this Act, the Appeal Board may confirm, vary, or annul the penalty, or substitute therefor any other penalty authorised in the section under which the penalty was imposed.

(7) In any appeal the onus of proof shall rest upon the
40 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 the provisions of paragraph (b), paragraph (c), or paragraph (d) of subsection (1) of this section, the onus of proof shall rest upon the Commission. 5

(8) The proceedings of the Appeal Board shall not be open to the public.

(9) Any person authorised by the Board may attend the hearing.

(10) At the hearing of any appeal the Commission may be represented by counsel or other advocate. 10

(11) At the hearing of any appeal the appellant shall be entitled to be present, and may be represented by counsel or by an officer or by an employee of the New Zealand Public Service Association (Incorporated) or of any other service organisation. 15

(12) Appeals affecting more than one appellant shall not be heard together, unless the Appeal Board so desires.

(13) In matters not expressly provided for in this Act or in any regulations made or continuing in force thereunder, the procedure of the Appeal Board shall be such as the Board may determine. 20

(14) Proceedings before the Appeal Board shall not be held bad for want of form. No appeal shall lie from any decision of the Board and, except on the ground of lack of jurisdiction, no proceeding or decision of the Board shall be liable to be challenged, reviewed, quashed, or called in question in any Court. 25

(15) The Appeal Board shall within the scope of its jurisdiction be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908; and, subject to the provisions of this Act, all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly. 30

(16) An appellant, if his appeal is allowed, shall be entitled to a refund out of money appropriated by Parliament for the purpose of actual and reasonable personal travelling and accommodation expenses incurred within New Zealand in attending the hearing; but, if the appeal is not allowed, the appellant shall not be entitled to a refund of any such expenses unless the Appeal Board expressly directs that the whole or a portion thereof should be refunded. 35 40

(17) If in the opinion of the Appeal Board any appeal under this section is frivolous or vexatious, or one that should not have been made, the appellant shall not be entitled to a refund of expenses and the Board may order him to pay the cost of the appeal in whole or in part, and the sum so ordered to be paid shall be recoverable by deduction from the salary of the appellant.

Cf. 1927, No. 60, ss. 8 (7), 17; 1951, No. 72, ss. 8, 9

65. Services for Appeal Board—The Department of Labour shall furnish such secretarial, recording, and clerical services as may be necessary to enable the Appeal Board to discharge its functions. All evidence recorded in any appeal shall be retained for a period of at least six months, and may then be disposed of, unless the Board in any case otherwise directs.

66. Offence to attempt to influence Appeal Board—(1) Except as provided in subsection (4) of this section, no person shall in any way attempt to influence the Appeal Board or any member of the Board in respect of any appeal.

(2) Any person who acts in contravention of the provisions of this section commits an offence, and is liable on summary conviction to a fine not exceeding one hundred pounds.

(3) An officer who is convicted of an offence under this section is liable without further charge or other proceedings to immediate dismissal or to such lesser penalty as the Commission may impose.

(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 Commission or the Appeal Board, or as a witness or as an appellant or the representative of an appellant at a hearing before the Appeal Board.

Cf. 1927, No. 60, s. 18

PART V

MISCELLANEOUS PROVISIONS RELATING TO THE PUBLIC SERVICE

67. Medical examinations—The Commission or any permanent head may require any applicant for appointment to the Public Service or any employee to submit himself to medical examination at his own expense or otherwise by a registered medical practitioner nominated by the Commission or the permanent head, as the case may be.

68. Educational qualifications—The Commission may from time to time prescribe and if necessary conduct examinations for the purpose of ascertaining the merit of candidates for appointment and employees for promotion.

Cf. 1912, No. 23, s. 49

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69. Employee may be charged rent—(1) If arising out of or in connection with his employment any employee of the Public Service is supplied by the Crown with any house or other premises for the purposes of residence, the Commission may, if he is not entitled to free quarters, direct that a fair and reasonable sum as rent thereof be deducted from the employee's salary, and the amount of that sum shall from time to time be fixed by the Commission.

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(2) In fixing rental policy under this section the Commission shall consult with the appropriate service organisations.

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Cf. 1912, No. 23, s. 30

70. Public Service apprentices—(1) The Commission may engage apprentices in accordance with the provisions of this Act, and an indenture of apprenticeship shall be entered into by the apprentice and his parent or guardian (if any) and by an authorised officer of the Department in which he is employed.

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(2) Notwithstanding anything contained in this Act, any apprentice employed in the Public Service may, with the consent of his parent or guardian (if any) or of the appropriate Apprenticeship Committee, if the course of his training so requires, be transferred to an employer who is not an officer of the Public Service for such period and upon or subject to such terms and conditions as the Commission may determine or approve.

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(3) Notwithstanding anything in the Apprentices Act 1948, any person who is serving under a contract of apprenticeship to which that Act applies may, with the consent of the Commission, be transferred to the Public Service for such period and upon or subject to such terms and conditions as the Commission may determine or approve.

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(4) Section 18 of the Master and Apprentice Act 1908 is hereby amended by adding to the definition of the term "master", after the word "Government", the words "other than an officer who is an employee of the Public Service".

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(5) 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
5 Public Service.

(6) Subsection (3) of section 28 of the Apprentices Act 1948 is hereby amended by inserting, after the words "Part II of the Master and Apprentice Act 1908", the words "or to the Public Service".

10 (7) There may, from time to time, be established by agreement between the Public Service Commission and the Public Service Association (Incorporated) or other appropriate service organisation, a New Zealand Apprenticeship Committee or Committees under the chairmanship of the Commissioner
15 of Apprenticeship, or local Committees under the chairmanship of the District Commissioners of Apprenticeship, along the lines, and for the functions and purposes set out in the Apprentices Act 1948 and failing agreement as aforesaid in any case, the Public Service Commission or the service
20 organisations may apply to the Tribunal, and the Tribunal, after hearing the parties, may direct the setting up of a New Zealand Apprenticeship Committee or local Committees as aforesaid:

25 Provided that, except as expressly stated, nothing in this subsection shall operate to apply the Apprentices Act 1948 to any apprentice engaged under this section:

30 Provided also that, notwithstanding anything in this subsection or in the Apprentices Act 1948, the powers and functions of any New Zealand or local Committee set up under this subsection shall not extend to cover any matter for which express provision is made in this Act.

71. Bonds—(1) Any employee or prospective employee to whom money is advanced, or on whose behalf expenditure is incurred with the approval of the Commission in connection
35 with transportation, education, training, or sustenance, or for any other special purpose, may be required as a condition of that advance or expenditure to sign a bond in a form to be determined by the Commission requiring him to pay to the Crown the sum therein specified if he makes default in the
40 performance of any condition of the bond:

45 Provided that the said amount shall be reduced during the currency of the bond by an amount equivalent to the proportion that the service rendered by the employee in accordance with the condition of the bond bears to the full period of service required for the discharge of the bond.

(2) The Commission may require that such a bond shall also be signed by a parent or guardian, or by some other person approved by the Commission, as surety; and the parent or guardian or person who signs such a bond shall be jointly and severally liable thereunder.

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(3) Every such bond shall be enforceable against the employee or prospective employee and the surety who signs it, notwithstanding anything in this Act or any other Act or any rule of law.

72. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Promoting efficiency and economy in the Public Service:
- (b) Prescribing standards of and conditions relating to office accommodation and physical working conditions:
- (c) Facilitating the recruitment, appointment, classification, and grading of employees:
- (d) Prescribing normal or special hours of attendance or duty, and modes of recording times spent on duty:
- (e) Subject to the provisions of the Public Revenues Act 1953, safeguarding Government money and property or any other money or property properly within the custody of any Department or employee, and preventing the incurring by the Crown of unauthorised liabilities:
- (f) Defining the terms and conditions of occupancy of Government dwellings or residential properties in terms of section 69 of this Act, and fixing the rentals payable for such dwellings or residential properties and matters ancillary thereto:
- (g) Relating to the conduct of employees or of any class thereof, the maintenance of integrity, the control of activities which are or may be detrimental to the performance of official duties, the furnishing of official information, and the maintenance of impartiality in the performance of official duties:
- (h) Prescribing the responsibilities and duties of officers controlling staff:
- (i) Prescribing the nature of personal reports on employees and the times when they are to be made:
- (j) Prescribing the nature and duration of leave of absence that may be granted to employees, and the terms and conditions of such leave:

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- (k) Empowering the Commission to prescribe allowances and make grants, and to prescribe the terms, conditions, and rates or amounts of allowances and grants that may be paid to employees in addition, or instead of, salary or wages:
- 5 (1) Fixing terms, conditions, rates, or amounts that may be paid to any person to recoup expenses incurred or to be incurred by such persons on the instructions or in the service of the Commission:
- 10 (m) Providing for the training of staff:
(n) Prescribing examinations or qualifications for the purposes of the appointment, the promotion, the classification, or the grading of employees:
- 15 (o) Prescribing terms and conditions of employment in respect of temporary salaried employees and wage workers:
(p) Prescribing conditions of retirement:
(q) Prescribing the forms of documents to be employed in dealing with staff and employment and appeal matters:
- 20 (r) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
(2) Regulations made pursuant to subsection (1) of this
- 25 section may be made either generally or with respect to any particular case or class of cases.
(3) Regulations made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date of the Order in Council making the
- 30 regulations), and if no such date is specified shall come into force on the date of their notification in the *Gazette*.

73. **Instructions**—Subject to this Act and any regulations made or continuing in force thereunder, and without restricting the powers of the Commission, it is hereby declared that

35 the Commission may from time to time issue in the form of a Public Service Manual instructions which shall be observed by all employees.

74. **Notices to employees**—Where any notice has to be given under this Act to any employee, it may be given—

40 (a) By delivering it to the employee to whom it has to be given; or
(b) By sending it to the employee in a letter addressed and posted to him at his usual place of employment or at his last known place of abode; or

(c) By publishing the notice in the *Public Service Official Circular*.

Cf. 1912, No. 23, s. 55

75. No compensation for loss of salary—Except as provided in this Act or any other Act, no employee shall be entitled to any compensation by reason of any reduction of his salary, or in consequence of his services being dispensed with. 5

Cf. 1912, No. 23, s. 62

76. Offence to attempt to influence Commission—
(1) Every person commits an offence against this section who directly or indirectly solicits or endeavours to influence the *Struck Out* 10

Commission or any Commissioner with respect to the appointment of any other person to the Public Service, or with respect to the promotion or salary of any employee in the Public Service. 15

New

Commission or any Commissioner with respect to decisions on the matters described in the proviso to subsection (1) of section 10 of this Act. 20

(2) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding one hundred pounds.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Commission in respect of any appointment, promotion, or grading at the request or invitation of the Commission. 25

(4) Nothing in this section shall be construed so as to prevent any organisation, being an organisation representing employees of the Public Service or any class or classes thereof, from making representations to the Commission on any matter affecting the salaries, wages, or conditions of employment of any employee or class of employees. 30

Cf. 1912, No. 23, s. 6

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77. Repeals, amendment, and saving—(1) The enactments mentioned in the Fourth Schedule to this Act are hereby repealed.

New

(1A) Section 4 of the Public Revenues Act 1953 is hereby amended—

5 (a) By inserting in subsection (1), after the word “appointed”, the words “under the State Services Act 1962”:

(b) By repealing subsection (2).

10 (2) Any person who by virtue of the appointment held by him was not subject to the provisions of the Public Service Act 1912 but on the commencement of this Act by virtue of holding that appointment became subject to the provisions of Parts III to V of this Act shall be deemed to be an officer duly appointed under this Act to the position then held by him and removable therefrom in accordance with the provisions of this Act, and no appeal shall lie in respect of his
15 appointment.

New

20 (3) All matters and proceedings commenced under any enactment repealed by this section and pending or in progress at the commencement of this Act may be continued or completed under the said enactment as if the enactments repealed by this section continued in force.

SCHEDULES

Section 11FIRST SCHEDULE

BRANCHES OF STATE SERVICES OTHER THAN THE PUBLIC SERVICE IN
RESPECT OF WHICH COMMISSION HAS FUNCTIONS

Post Office.
New Zealand Government Railways Department.
Legislative Department.
Law Drafting Office.
New Zealand Broadcasting Corporation.
New Zealand National Airways Corporation.
Tasman Empire Airways.
Tourist Hotel Corporation of New Zealand.
Linen Flax Corporation of New Zealand.
The Police of New Zealand.
Armed forces.

Section 22 (1)SECOND SCHEDULE

DEPARTMENTS OF THE PUBLIC SERVICE

Department of Agriculture.
Air Department.
Army Department.
Audit Office.
Crown Law Office.
Customs Department.
Department of Defence.
Department of Education.
New Zealand Electricity Department.
External Affairs Department.
New Zealand Forest Service.
Government Life Insurance Office.
Government Printing Office.
Department of Health.
Department of Industries and Commerce.
Inland Revenue Department.
Department of Internal Affairs.
Department of Island Territories.
Department of Justice.
Department of Labour.
Department of Lands and Survey.
Department of Maori Affairs.
Marine Department.
Mines Department.
Ministry of Fuel and Power.
Navy Department.
Police Department.
Prime Minister's Department.
Office of the State Services Commission.
Public Trust Office.

SECOND SCHEDULE—*continued*DEPARTMENTS OF THE PUBLIC SERVICE—*continued*

Department of Scientific and Industrial Research.
 Social Security Department.
 State Advances Corporation of New Zealand.
 State Fire Insurance Office.
 Department of Statistics.
 Tourist and Publicity Department.
 Transport Department.
 The Treasury.
 Valuation Department.
 Ministry of Works.

THIRD SCHEDULE Sections 28 (3), 29, 64

OFFICES AND POSITIONS EXEMPT FROM APPEAL

Department	Office or Position
Agriculture	Director-General. Assistant Director-General.
Air	Air Secretary. Director of Civil Aviation.
Army	Army Secretary.
Audit	Assistant Controller and Auditor-General.
Customs	Comptroller. Assistant Comptroller.
<u>Defence</u>	<u>Secretary.</u> <u>Assistant Secretary.</u>
Education	Director. Assistant Director. Assistant Director (Administrative).
Electricity	General Manager. Assistant General Manager.
External Affairs	Secretary. Deputy Secretary.
Forest Service	Director-General. Deputy Director-General.
Government Life	Commissioner. Deputy Commissioner.
Government Printing Office	Government Printer.
Health	Director-General. Deputy Director-General. Deputy Director-General (Administrative).
Industries and Commerce	Secretary. Assistant Secretary.
Inland Revenue	Commissioner. Chief Deputy Commissioner.
Internal Affairs	Secretary. Deputy Secretary.
Island Territories	Secretary.
Justice	Secretary. Deputy Secretary.

THIRD SCHEDULE—*continued*OFFICERS AND POSITIONS EXEMPT FROM APPEAL—*continued*

Department	Office or Position
Labour	Secretary. Assistant Secretary.
Lands and Survey	Director-General. Assistant Director-General.
Maori Affairs	Secretary. Deputy Secretary.
Marine	Secretary.
Mines	<u>Under-Secretary.</u> <u>Assistant Under-Secretary (Administrative).</u> <u>Assistant Under-Secretary (Technical).</u>
<u>Ministry of Fuel and Power</u>	<u>Commissioner.</u> <u>Assistant Commissioner.</u>
Navy	Navy 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.
Scientific and Industrial Research	Secretary. Deputy Secretary. Assistant Secretary.
Social Security	Director. Deputy Director. Assistant Director.
State Advances	General Manager. Deputy General Manager.
State Fire Insurance	General Manager. Deputy General Manager.
Statistics	Government Statistician. Deputy Government Statistician.
Tourist and Publicity	General Manager.
Transport	Commissioner.
Treasury	Secretary. Deputy Secretary. Assistant Secretary.
Valuation	Valuer-General.
Works	Commissioner. Assistant Commissioner.

FOURTH SCHEDULE

Section 77 (1)

ENACTMENTS REPEALED

- 1912, No. 23—The Public Service Act 1912. (1957 Reprint, Vol. 12, p. 319.)
- 1919, No. 55—The Appropriation Act 1919: Section 41. (1957 Reprint, Vol. 12, pp. 335, 374.)
- 1920, No. 85—The Appropriation Act 1920: Sections 19 and 20. (1957 Reprint, Vol. 12, pp. 335, 374.)
- 1921–22, No. 74—The Appropriation Act 1921–22: Section 11. (1957 Reprint, Vol. 12, p. 375.)
- 1923, No. 27—The Finance Act 1923: Section 20. (1957 Reprint, Vol. 12, pp. 329, 375.)
- 1925, No. 52—The Appropriation Act 1925: Section 21. (1957 Reprint, Vol. 12, pp. 333, 376.)
- 1926, No. 46—The Finance Act 1926: Section 29. (1957 Reprint, Vol. 12, pp. 339, 376.)
- 1927, No. 60—The Public Service Amendment Act 1927. (1957 Reprint, Vol. 12, p. 377.)
- 1938, No. 13—The Finance Act 1938: Section 10. (1957 Reprint, Vol. 12, pp. 337, 378.)
- 1944, No. 25—The Statutes Amendment Act 1944: Sections 50, 52, and 53. (1957 Reprint, Vol. 12, p. 378.)
- 1944, No. 31—The Finance Act (No. 3) 1944: Section 37. (1957 Reprint, Vol. 12, pp. 351, 379.)
- 1945, No. 45—The Finance Act (No. 2) 1945: Section 45. (1957 Reprint, Vol. 12, p. 379.)
- 1946, No. 16—The Finance Act 1946: Section 33. (1957 Reprint, Vol. 12, p. 379.)
- 1946, No. 42—The Public Service Amendment Act 1946. (1957 Reprint, Vol. 12, p. 380.)
- 1947, No. 45—The Finance Act (No. 2) 1947: Section 38. (1957 Reprint, Vol. 12, p. 382.)
- 1949, No. 40—The Government Railways Act 1949: Section 121 (2). (1957 Reprint, Vol. 5, p. 783.)
- 1950, No. 74—The Public Service Amendment Act 1950. (1957 Reprint, Vol. 12, p. 383.)
- 1951, No. 72—The Public Service Amendment Act 1951. (1957 Reprint, Vol. 12, p. 383.)
- 1952, No. 4—The Public Service Amendment Act 1952. (1957 Reprint, Vol. 12, p. 385.)
- 1954, No. 15—The Public Service Amendment Act 1954. (1957 Reprint, Vol. 12, p. 385.)
- 1959, No. 30—The Post Office Act 1959: Section 250 (8).
- 1959, No. 103—The Public Service Amendment Act 1959.
- 1960, No. 85—The Public Service Amendment Act 1960.