

COMMONWEALTH PUBLIC SERVICE (No. 2).

No. 43 of 1945.

An Act to amend the *Commonwealth Public Service Act 1922-1943*, as amended by the *Commonwealth Public Service Act 1945* and by the *Re-establishment and Employment Act 1945*, and for other purposes.

[Assented to 11th October, 1945.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Commonwealth Public Service Act (No. 2) 1945*.

(2.) Section twenty-three of the *Re-establishment and Employment Act 1945** is amended by omitting sub-section (6.).

(3.) The *Commonwealth Public Service Act 1922-1943*†, as amended by the *Commonwealth Public Service Act 1945*‡ and by the *Re-establishment and Employment Act 1945*, is in this Act referred to as the Principal Act.

(4.) The Principal Act, as amended by this Act, may be cited as the *Commonwealth Public Service Act 1922-1945*.

Commencement.

2. Except as otherwise provided in this Act, the several sections of this Act shall commence on such dates as are respectively fixed by Proclamation.

Joint
Council and
Classification
Committees.

3. After section nineteen of the Principal Act the following section is inserted:—

“19A.—(1.) The regulations may make provision for the establishment of a Joint Council and of Classification Committees.

“(2.) The Joint Council shall be representative of the Board and of Departments and of organizations of officers or employees and shall be constituted in such manner as is prescribed.

* Act No. 11, 1945.
† Act No. 21, 1922, as amended by No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; and No. 19, 1943.
‡ Act No. 29, 1945.

“(3.) The Joint Council shall have such functions as are prescribed with respect to matters of general interest in relation to the Commonwealth Service which are referred to the Council by the Board.

“(4.) A Classification Committee shall be constituted in such manner as is prescribed and shall have such functions in relation to the classification of officers as are prescribed.”.

4. Section twenty-nine of the Principal Act is amended by adding at the end of sub-section (2.) the words “and the officer who occupied that office immediately prior to the alteration of its classification shall be an unattached officer”.

Alterations of staff.

5.—(1.) After section forty-seven of the Principal Act the following section is inserted :—

“47A.—(1.) Notwithstanding anything contained in this Act, if the Governor-General is satisfied that any officer who was employed in the Commonwealth Service—

Appointment of persons who have resigned from the Commonwealth Service to become candidates elections.

- (a) resigned from the Service in order to become a candidate for election as a member of any House of the Parliament of the Commonwealth or of a State ;
- (b) was a candidate at the election ; and
- (c) failed to be elected,

and that the resignation was effective not earlier than one month prior to the date on which nominations for the election closed, the Governor-General may, upon application by that resigned officer within two months after the declaration of the result of the election and upon the recommendation of the Board, appoint him to the Commonwealth Service without examination, and, if the Governor-General thinks fit, without probation, at the same classification as he had immediately prior to his resignation.

“(2.) A person so appointed shall be deemed to have continued in the Commonwealth Service as if he had not resigned and as if during the period from the day of his resignation to the day immediately preceding his appointment he had been on leave of absence without pay, and that period shall be included as part of the officer's period of service.”.

(2.) Any officer who, after the first day of September, One thousand nine hundred and forty—

- (a) resigned from the Commonwealth Service in order to become a candidate for election as a member of any House of the Parliament of the Commonwealth or of a State ;
- (b) was a candidate at the election ; and
- (c) failed to be elected,

and, thereafter, but prior to the commencement of this Act, was appointed to the Commonwealth Service, shall be deemed to have been appointed in pursuance of sub-section (1.) of section forty-seven A of the *Commonwealth Public Service Act 1922-1945*, and the provisions of sub-section (2.) of that section shall apply in relation to his service accordingly.

Certain prior service reckoned as Commonwealth service.

6. Section forty-eight AA of the Principal Act is amended by adding at the end thereof the following sub-section :—

“(2.) Where a person who was employed by the Federal Capital Commission constituted under the *Seat of Government (Administration) Act 1924*, or under that Act as subsequently amended, is, at the commencement of this sub-section, an officer of the Commonwealth Service and his service in the Commonwealth Service is continuous with a period of continuous service which is the aggregate of—

- (a) a period of permanent service in the Public Service of a State before his employment under the Federal Capital Commission ;
- (b) a period of employment under the Federal Capital Commission ; and
- (c) a period of employment in the Public Service of the Commonwealth, after his employment under the Federal Capital Commission.

that period of continuous service shall be reckoned for the purposes of this Act as service in a permanent capacity in the Commonwealth Service.”.

Promotions.

7. Section fifty of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “Whenever a vacancy occurs” and inserting in their stead the words “Where a vacancy exists” ;
- (b) by omitting from that sub-section the word “occurs” (second occurring) and inserting in its stead the word “exists” ;
- (c) by omitting from sub-section (2.) the word “occurs” and inserting in its stead the word “exists” ;
- (d) by inserting after that sub-section the following sub-section :—

“(2A.) Where the Board approves of a transfer under the last preceding sub-section, the Board shall notify in writing the Permanent Head of the Department in which the vacancy exists and also the Permanent Head of the Department from which the officer is to be transferred and, upon being so notified, the last-mentioned Permanent Head shall forthwith release the officer.” ;

- (e) by inserting in sub-section (3.), after the word "shall", the words " , subject to the next succeeding sub-section," ;
- (f) by inserting after sub-section (3.) the following sub-section :—
 " (3A.) The regulations may provide for the selection of officers for promotion to prescribed offices or to offices included in any prescribed group or section of offices on the basis of the selection of the senior efficient officer available for promotion." ;
- (g) by omitting from sub-section (4.) the words " or the Board " and inserting in their stead the words " , the Board or a Promotions Appeal Committee " ;
- (h) by inserting after sub-section (4.) the following sub-section :—
 " (4A.) Notwithstanding anything contained in the last preceding sub-section, ' efficiency ' shall, in relation to promotions to such senior executive offices in a Department as are prescribed, include not only special qualifications and aptitude for the discharge of the duties of the office to be filled but also for the discharge of the duties of offices of higher status in the Department." ;
- (i) by omitting from sub-section (5.) the words " to the Board " and inserting in their stead the words " as provided in this section " ;
- (j) by inserting after that sub-section the following sub-sections :—
 " (5A.) For the purposes of this section, there shall be a Promotions Appeal Committee for each State which shall be constituted as prescribed.
 " (5B.) The members of a Promotions Appeal Committee shall hold office upon such terms and conditions (including tenure of office) as are prescribed.
 " (5C.) Every member of a Promotions Appeal Committee shall, before proceeding to perform the duties or exercise the powers of a member of a Promotions Appeal Committee, take an oath or make an affirmation in the form in the Sixth Schedule to this Act." ;
- (k) by inserting in sub-section (6.), after the word " may ", the words " , subject to the next succeeding sub-section," ;
- (l) by inserting after sub-section (6.) the following sub-section :—
 " (6A.) Where the regulations prescribe that the selection of officers for promotion to an office or to an office included in a group or section of offices shall be made on the basis of the selection of the senior efficient officer available

for promotion, an appeal under the last preceding sub-section in respect of a provisional promotion to a vacancy in any such office may be made by any officer on the ground that he is senior to the officer provisionally promoted and is efficient.”;

- (m) by inserting in sub-section (7A.), after the word “ section ” (first occurring), the words “ or on the ground specified in sub-section (6A.) of this section, as the case may be ” ;
- (n) by inserting in that sub-section, after the word “ Act ”, the words “ or is absent from Australia on official duty ” ;
- (o) by adding at the end of that sub-section the words “ and as if that officer had been at the date of the appeal performing his duties in the State in which immediately prior to the grant of leave or his departure from Australia on official duty, as the case may be, he was performing his duties ” ;
- (p) by omitting sub-section (8.) and inserting in its stead the following sub-sections :—

“ (8.) Upon receipt of the appeal, the Board shall forward the appeal to the appropriate Promotions Appeal Committee and shall furnish to the Committee particulars of every such officer who is referred to in the last preceding sub-section.

“ (8A.) Except as provided in sub-sections (8B.), (8C.) and (8D.) of this section, the Promotions Appeal Committee for the State in which the vacancy in an office exists shall make full inquiries into the claims of the appellant and those of the officer provisionally promoted, and shall determine the appeal and, for the purpose of any such determination, the decision of the majority of the members of the Committee shall be deemed to be the determination of the Committee.

“ (8B.) Where an appeal is made in respect of an office to which there has been assigned a maximum rate of salary in excess of such maximum rate as is prescribed for the purpose of this sub-section and both the officer provisionally promoted and the appellant perform their duties in the same State, the Promotions Appeal Committee for that State shall make full inquiries into, and make a report to the Board on, the claims of the appellant and those of the officer provisionally promoted.

“ (8C.) Where an appellant and the officer provisionally promoted perform their duties in different States, the Promotions Appeal Committee for the State in which

the appellant performs his duties and the Promotions Appeal Committee for the State in which the officer provisionally promoted performs his duties shall respectively make full inquiries into, and make a report to the Board on, the claims of the appellant or those of the officer provisionally promoted, as the case may be.

“(8D.) Upon receipt of all reports of Promotions Appeal Committees under sub-section (8B.) or sub-section (8C.) of this section in respect of any appeal, the Board shall determine the appeal.”;

(q) by omitting from sub-section (9.) the words “by the Board, it” and inserting in their stead the words “in pursuance of this section, the Board”; and

(r) by adding at the end thereof the following sub-sections:—

“(13.) Until such date as is prescribed, appeals by officers performing their duties in, or in respect of vacancies in offices in, the Northern Territory shall be inquired into and determined as prescribed.

“(14.) For the purposes of this section, the Australian Capital Territory shall be regarded as a State and, as from such date as is prescribed, the Northern Territory shall be regarded as a State.”.

8. After section fifty of the Principal Act the following section is inserted:—

“51.—(1.) Where, in the opinion of the Board, it is necessary in the interests of the Commonwealth Service to transfer an officer temporarily from one Department to another, the Board may direct that that officer be so transferred and as from such date (if any) as the Board specifies.

Temporary transfers of officers from one Department to another.

“(2.) The Board shall notify in writing the Permanent Head of each of the Departments concerned of any direction under the last preceding sub-section and, upon being so notified, the Permanent Head of the Department from which the officer is to be transferred temporarily shall forthwith release the officer.”.

9. Section sixty-two of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(6.) Where an officer has been so dismissed (whether before or after the commencement of this sub-section) but the conviction has been subsequently quashed or he has received a pardon or the conviction has been otherwise nullified, or he has been released from

Officer convicted of criminal offence.

prison as a result of an inquiry into the conviction, he may be appointed by the Board, without examination, and, if the Board thinks fit, without probation, to the Commonwealth Service at the same classification as he had immediately before his dismissal.

“(7.) A person so appointed shall be deemed to have continued in the Commonwealth Service as if he had not been dismissed and as if, during the period during which he ceased to perform the duties of his office he had been on leave of absence without pay, and that period shall be included as part of the officer’s period of service.”.

Leave without pay.

10. Section seventy-one of the Principal Act is amended by inserting in sub-section (1.), after the words “ League of Nations ”, the words “ or any other prescribed international body or organization ”.

Leave of absence for service with other Governments, &c.

11. Section seventy-two A of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the words “ League of Nations ” (first occurring), the words “, or any other prescribed international body or organization ”;

(b) by inserting in that sub-section, after the words “ League of Nations ” (second occurring), the words “ or to that body or organization ”; and

(c) by adding at the end thereof the following sub-section :—

“(3.) If, in the opinion of the Board, it is necessary to fill the office in any Department of an officer who is granted leave under this section, the Board may declare that office to be vacant and, thereupon, the officer shall be deemed to be an unattached officer of the Commonwealth Service.”.

12. After section seventy-two A of the Principal Act the following section is inserted :—

Leave of absence to officer appointed as representative of the Commonwealth abroad.

“72B.—(1.) If an officer is appointed to be a representative in another country of the Government of the Commonwealth of Australia, the Board may, on application by the officer, grant to him leave of absence without pay for a period not exceeding the period for which he is necessarily unavailable for employment in the Commonwealth Service in consequence of that appointment.

“(2.) The period during which any officer is absent on leave granted in pursuance of this section shall for all purposes be included as part of the officer’s period of service.

“(3.) Where an officer is granted leave of absence in pursuance of this section, his office in the Commonwealth Service shall become vacant upon the commencement of the period of that leave of absence, and he shall be an unattached officer of the Commonwealth Service during that period.

“(4.) Upon the termination of a period of leave of absence granted in pursuance of this section, the unattached officer shall, unless he has been dismissed for misconduct or has attained the maximum age for retirement fixed by this Act, be entitled to be appointed by the

Board to an office in the Commonwealth Service of such status and salary as are determined by the Board, having regard to the office previously vacated by him and the period of his appointment as a representative in another country of the Government of the Commonwealth of Australia."

13.—(1.) Section seventy-five of the Principal Act is amended by omitting from paragraph (b) the words "any service" and inserting in their stead the words "in addition to any service which, by virtue of this Act, is reckoned for the purposes of this Act as service in the Commonwealth Service, any service (not being so reckoned)".

Definitions of
"salary" and
"service".

(2.) This section shall be deemed to have come into operation on the twenty-ninth day of March, One thousand nine hundred and forty-three.

14.—(1.) After section seventy-five of the Principal Act the following section is inserted:—

"75A.—(1.) Notwithstanding anything contained in sections seventy-three and seventy-four of this Act, where an officer of the Public Service of the Northern Territory was, on the twelfth day of June, One thousand nine hundred and forty-one, appointed under section forty-two of this Act to an office in the Commonwealth Service, the Board may grant to the officer or his dependants, as the case may be, furlough, or pay on his retirement or death, in accordance with this section.

Officers
formerly
officers of
the Northern
Territory—
furlough or
pay in lieu
thereof.

"(2.) If, after that appointment, the officer—

(a) is not allocated for duty (otherwise than in a temporary or acting capacity) outside the territorial limits of the Northern Territory; or

(b) is so allocated, but retires or dies before he has completed a total period of twenty years service,

he may be granted furlough for a period not exceeding the period, or pay not exceeding the pay, which could have been granted under the *Public Service Ordinance* 1928-1941 of the Northern Territory, if he had remained an officer of the Public Service of that Territory.

"(3.) If, after that appointment, the officer is allocated for duty (otherwise than in a temporary or acting capacity) outside the territorial limits of the Northern Territory, and performs a total period of service of twenty years or more, he may be granted furlough or pay, as the case may be, in accordance with section seventy-three of this Act, but, in respect of the portion of his service prior to that allocation, the period of furlough, or the amount of pay, shall be determined in accordance with the *Public Service Ordinance* 1928-1941 of the Northern Territory as if the whole of his service had been under that Ordinance, and for that purpose, the portion of his service performed prior to that allocation shall be deemed to be the minimum period of service necessary to be taken into account in making that determination.

“(4.) There shall not be granted under this Act, in respect of the total service of any officer to whom this section applies, leave of absence or pay on retirement or death exceeding in the whole twelve months on full salary or its equivalent.”.

(2.) This section shall be deemed to have come into operation on the twelfth day of June, One thousand nine hundred and forty-one.

15.—(1.) After section eighty-two A of the Principal Act the following section is inserted in Division 10 of Part III. :—

Temporary employment of persons who have resigned to become candidates at elections.

“82B.—(1.) Notwithstanding anything contained in the last preceding section, if the Board is satisfied that any person who was temporarily employed in any Department—

- (a) resigned from that employment in order to become a candidate for election as a member of any House of the Parliament of the Commonwealth or of a State ;
- (b) was a candidate at the election ; and
- (c) failed to be elected,

and that the resignation was effective not earlier than one month prior to the date on which nominations for the election closed, the Board may, upon application by that person within two months after the declaration of the result of the election, employ him in the same or in a similar capacity with the same rate of pay as that payable to him immediately prior to the date upon which his resignation took effect.

“(2.) A person so employed shall be deemed to have continued in temporary employment in the Commonwealth Service as if the period of his employment in pursuance of this section and the unbroken period of his employment immediately prior to the date upon which his resignation took effect were a continuous period of temporary employment.”.

(2.) Any person who was temporarily employed in any Department and who, after the first day of September, One thousand nine hundred and forty—

- (a) resigned from that employment in order to become a candidate for election as a member of any House of the Parliament of the Commonwealth or of a State ;
- (b) was a candidate at the election ; and
- (c) failed to be elected,

and, thereafter, but prior to the commencement of this Act, was temporarily employed in any Department shall be deemed to have been employed in pursuance of sub-section (1.) of section eighty-two B of the *Commonwealth Public Service Act 1922-1945*, and the provisions of sub-section (2.) of that section shall apply in relation to his employment accordingly.

16.—(1.) Section ninety-one of the Principal Act is amended—

- (a) by omitting from sub-section (2.) the word “ Act ” and inserting in its stead the word “ law ”; and
 (b) by adding at the end thereof the following sub-section :—

Performance
of work outside
Commonwealth
Service.

“ (3.) Notwithstanding anything contained in this section, an officer may, with the approval of the Board (which approval may at any time be withdrawn), act as a director of a co-operative society which is registered under any law in any State or elsewhere and does not enter into contracts for the supply of goods or services to the Commonwealth.”.

(2.) This section shall be deemed to have come into operation on the first day of March, One thousand nine hundred and forty-five.

17. Section ninety-seven of the Principal Act is amended—

- (a) by adding at the end of paragraph (a) of sub-section (1.) the words “ and also, in relation to officers included in any group or section of officers, the seniority of those officers for the purposes of transfer or promotion within that group or section ”; and
 (b) by adding at the end of paragraph (h) of that sub-section the words “ or of Promotions Appeal Committees ”; and
 (c) by inserting after paragraph (s) of that sub-section the following paragraph :—

Regulations for
Commonwealth
Service.

“ (sa) for providing for appeals against temporary transfers ; ”.

18. The Principal Act is amended by adding at the end thereof the following Schedule :—

Sixth Schedule.

“ SIXTH SCHEDULE.

OATH.

“ I, A. B., do swear that I will well and truly serve our Sovereign Lord the King as a member of the Promotions Appeal Committee constituted under the *Commonwealth Public Service Act 1922-1945* for the State of (here insert name of State) and that I will perform the duties and exercise the powers imposed or conferred upon me as such member without fear or favour affection or ill-will. SO HELP ME, GOD !

AFFIRMATION.

“ I, A. B., do solemnly and sincerely affirm and declare that I will well and truly serve our Sovereign Lord the King as a member of the Promotions Appeal Committee constituted under the *Commonwealth Public Service Act 1922-1945* for the State of (here insert name of State) and that I will perform the duties and exercise the powers imposed or conferred upon me as such member without fear or favour affection or ill-will.”.