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**TASMANIAN STATE SERVICE AMENDMENT ACT  
1988**

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**No. 18 of 1988**

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SCHEDULE 1

AMENDMENTS OF PRINCIPAL ACT FOR  
PURPOSE OF CONVERTING MONETARY  
PENALTIES INTO PENALTY UNITS



## TASMANIAN STATE SERVICE AMENDMENT ACT 1988

No. 18 of 1988

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**AN ACT to amend the Tasmanian State Service Act 1984.**

**[Royal Assent 8 September 1988]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1**—This Act may be cited as the *Tasmanian State Service* Short title.  
*Amendment Act 1988.*

**2**—(1) This section and section 1 shall commence on the Commencement.  
day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

**3**—In this Act, the *Tasmanian State Service Act 1984*\* is Principal Act.  
referred to as the Principal Act.

\* No. 25 of 1984. Amended by Nos. 61, 88, 107, 112, and 126 of 1985, No. 41 of 1986, No. 106 of 1987, and by S.R. 1986, Nos. 3, 122, and 315, and S.R. 1987, No. 77.

Amendment of section 19 of Principal Act (Powers of Secretary).

**4**—Section 19 of the Principal Act is amended by adding after “person” in subsection (4) *(b)* “or organization including the board of management of a public hospital”.

Amendment of section 23 of Principal Act (Powers of Minister).

**5**—Section 23 of the Principal Act is amended by omitting from subsection (3) *(a)* “*(b)* or *(c)*” and substituting “*(a)*, *(b)*, or *(c)*”.

Amendment of section 24 of Principal Act (Creation, &c., of Government departments).

**6**—Section 24 of the Principal Act is amended by inserting in subsection (1) “amalgamate a part or parts of a Government department with another Government department,” after “departments,”, secondly occurring.

Amendment of section 29 of Principal Act (Appointment, &c., of certain Heads of Agencies).

**7**—Section 29 of the Principal Act is amended by inserting in subsection (13) “or his term of office being terminated before the expiration of that term” after “resignation”.

Amendment of section 33 of Principal Act (Functions and powers of Heads of Agencies).

**8**—Section 33 of the Principal Act is amended by inserting after subsection (5) the following subsection:—

(5A) The Head of an Agency may, with the prior written consent of the employee concerned and with the approval of the Commissioner, declare a position held by the employee in that Agency to be vacant.

Insertion in Principal Act of new section 33B.

**9**—After section 33A of the Principal Act, the following section is inserted in Part VI:—

Interpretation for purposes of Part VI.

**33B**—For the purposes of Part VI, a reference to the promotion of a permanent employee includes a reference to the transfer of a permanent employee to another position otherwise than in accordance with section 42.

Amendment of section 34 of Principal Act (Appointments, &c., in the State Service).

**10**—Section 34 of the Principal Act is amended by inserting after subsection (2) the following subsection:—

(2A) The Minister may, by instrument in writing, revoke wholly or in part or vary a delegation made by him under this section.

Amendment of section 37 of Principal Act (Conditions for appointment).

**11**—Section 37 of the Principal Act is amended by adding after subsection (6) the following subsections:—

(7) The Minister may, by instrument in writing signed by him—

*(a)* delegate to a person specified in the instrument his function of confirming appointments under this section; and

(b) delegate to the Head of an Agency his other functions and powers under this section.

(8) The Minister may, by instrument in writing, revoke wholly or in part or vary a delegation made by him under subsection (7).

(9) A delegation under subsection (7) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument of delegation.

(10) Any act or thing done by a delegate while acting in the exercise of a delegation under subsection (7) shall have the same force and effect as if the act or thing had been done by the Minister and shall be deemed to have been done by the Minister.

(11) An instrument purporting to be signed by a delegate of the Minister in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Minister and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Minister under subsection (7).

**12—Section 38 of the Principal Act is amended as follows:—**

Amendment of section 38 of Principal Act (Temporary employment).

(a) by inserting in subsection (2) “all or part of” after “Agency”, secondly occurring;

(b) by inserting in subsection (2) “on such terms and conditions as he may determine” after “Agency”, thirdly occurring;

(c) by inserting after subsection (2) the following subsection:—

(2A) The Minister may, by instrument in writing, revoke wholly or in part or vary a delegation made by him under this section.

(d) by inserting in subsection (3) “, when exercised by the Head of Agency or that other person,” after “purposes”;

(e) by inserting after subsection (6) the following subsection:—

(6A) If a permanent employee is appointed as a contract employee, he is entitled to retain all his existing and accruing rights with respect to leave as if his service as a contract employee were a continuation of his service as a permanent employee.

(f) by inserting in subsection (8) “is terminated before the expiration of the term of the contract or” after “service”;

(g) by inserting after subsection (8A) the following subsection:—

(8B) Without limiting the operation of subsection (7), a contract employee, who immediately before his appointment as a contract employee was a permanent employee, is subject to the provisions of Part IX as if he were a permanent employee.

Amendment of section 41 of Principal Act (Compulsory retirement).

**13**—Section 41 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

(1A) The Head of an Agency may, on the basis of medical evidence relating to a permanent employee employed in that Agency, recommend to the Minister that the employee be retired and the Minister may, if he is of the opinion on the basis of that medical evidence that the employee is unfit to continue to perform the duties assigned to his position, retire the employee.

Amendment of section 42 of Principal Act (Transfer of employees).

**14**—Section 42 of the Principal Act is amended by inserting after subsection (3) the following subsection:—

(3A) The Head of an Agency may, on the application, in writing, of an employee employed in that Agency, transfer the employee to another position of lower classification or salary in that Agency if the Head of the Agency considers that the employee is capable, competent, and qualified to perform the duties attached to that position.

Amendment of section 43 of Principal Act (Secondment of permanent employees within the State Service).

**15**—Section 43 of the Principal Act is amended as follows:—

(a) by inserting after subsection (1) the following subsection:—

(1A) The Head of an Agency may, with the approval of the Commissioner, enter into an arrangement with the Head of any other Agency for a permanent employee employed in that other Agency to be made available to perform the duties of a position in the first-mentioned Agency on terms and conditions less favourable to that employee than the terms and conditions of service that would, but for the arrangement, be applicable to him as a permanent employee employed in the other Agency.

- (b) by inserting in subsections (2), (3), (4), and (5) “or (1A)” after “subsection (1)”.

**16**—Section 51 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

Amendment of section 51 of Principal Act (Unattached List).

(1A) Where the Commissioner receives a report from the Retirement Benefits Board that the Board is of the opinion that the health of an invalidity pensioner under the *Retirement Benefits Act 1982* is so restored as to enable him to perform the duties of any office or position that is available to him and that he may be required to accept, the Commissioner may register the name of that person on the Unattached List and, on his name being so registered, that person shall be deemed to be a permanent employee.

**17**—Section 52 of the Principal Act is amended as follows:—

Amendment of section 52 of Principal Act (Inability of permanent employees to discharge duties).

- (a) by omitting from subsection (1) (c) “position; or” and substituting “position;”;

- (b) by omitting from subsection (1) (d) “position,” and substituting “position; or”;

- (c) by inserting after subsection (1) (d) the following paragraph:—

(e) is medically fit to discharge the duties of his position,

- (d) by adding in subsection (1) “and shall notify the employee that he has made such a recommendation to the Commissioner” after “inquiry”, secondly occurring;

- (e) by inserting after subsection (2) the following subsection:—

(2A) The Commissioner shall advise the permanent employee concerned whether or not he intends to appoint a person to conduct an inquiry referred to in subsection (1).

(f) by omitting subsection (9) and substituting the following subsection:—

(9) The person conducting an inquiry referred to in subsection (1) in relation to a permanent employee—

(a) shall notify the Head of the Agency in which the employee is employed of the findings of his inquiry and shall make such recommendations to the Head of the Agency with respect to the employee as he considers necessary;

(b) shall advise the Commissioner of the findings of his inquiry and of any recommendations made to the Head of the Agency with respect to the employee; and

(c) shall by notice in writing served on that employee, notify the employee of the findings of his inquiry.

(g) by inserting after subsection (10) the following subsection:—

(10A) If the Head of an Agency proposes to take action under subsection (10) (e), (f), (g), (i), or (j) in respect of a permanent employee, he shall notify the Commissioner of his intention to take such action.

(h) by inserting after subsection (13) the following subsections:—

(13A) Where the Commissioner receives a recommendation from the Head of an Agency under subsection (10) (h), he may transfer the employee to whom the recommendation relates to a position in another Agency having the same or a lower classification or salary.

(13B) Where the Commissioner receives a recommendation from the Head of an Agency under subsection (10) (h) and he is unable to transfer the employee to whom the recommendation relates to a position in another Agency, he shall advise the Head of Agency of his inability to transfer the employee and request the Head to take such other action under subsection (10) as the Head considers necessary.



18—Section 54 of the Principal Act is amended as follows:—

Amendment of  
section 54 of  
Principal Act  
(Offences).

(a) by omitting paragraph (h) and substituting the following paragraph:—

(h) without the permission of the Minister administering the Agency in which he is employed, makes any communication or contribution, directly or indirectly, and whether anonymously or otherwise, on any matter affecting the Agency in which he is employed, the position held by him, or his powers, functions, and duties as an employee to any newspaper or publication of a like nature, other than—

(i) in the case of an employee who is a member of a professional health organization, a journal or publication relating to or relevant to the profession of that employee; or

(ii) in the case of an employee who is a member of an employee organization, a journal or publication issued by or under the authority of that employee organization; or

(b) by inserting in paragraph (i) of subsection (1) “otherwise than, in the case of an employee who is a member of a professional health organization, by way of a contribution to a journal or publication relating to or relevant to the profession of that employee” after “State Service”;

(c) by adding after subsection (2) the following subsections:—

(3) Where a person provided information or made a statement or representation to the Head of an Agency or his representative in relation to an application for appointment to a position in that Agency or at any stage in the selection process for appointment to that position and that information, statement, or representation was to his knowledge false or misleading in a material particular, and that person was appointed to that position as a permanent employee, he is guilty of an offence, notwithstanding that at the time he committed the offence he was not a permanent employee, and is liable to be dealt with as provided in this Part.

(4) Where a permanent employee provided information or made a statement or representation to the Head of an Agency or his representative in relation to an application for promotion or transfer to another position in the State Service or at any stage in the selection process for promotion or transfer to that position, and that information, statement, or representation was to his knowledge false or misleading in a material particular, he is guilty of an offence and is liable to be dealt with as provided in this Part.

(5) A permanent employee who, in connection with his employment, provides any information or makes any statement or representation (not being information, or a statement or representation, referred to in subsection (3) or (4)) which is to his knowledge false or misleading in a material particular is guilty of an offence and is liable to be dealt with as provided in this Part.

**19**—Section 55 of the Principal Act is amended as follows:—

(a) by omitting subsection (7) and substituting the following subsections:—

(7) Where the Commissioner has appointed a person to conduct an inquiry into a charge referred to in subsection (5), the permanent employee charged with the offence shall be notified that a person has been appointed to conduct such an inquiry.

(7A) The person conducting an inquiry into a charge referred to in subsection (5) may determine whether or not a formal hearing is required.

(b) by omitting from subsection (8) “a statement pursuant to subsection (7)” and substituting “an explanation under subsection (1)”;

(c) by inserting in subsection (8) “or written” after “oral”;

(d) by inserting in subsection (10) “a person conducting the inquiry has determined that” after “Where”;

(e) by inserting in subsection (12) “or offences” after “offence”;

(f) by omitting from subsection (13) “subsection (12)—” and substituting “subsection (12), exercise one or more of the following powers:—

(aa) cause the employee to be counselled;”;

(g) by omitting from paragraph (f) of subsection (13) “notice; or” and substituting “notice;”;

(h) by omitting from subsection (13) all the words following “State”, secondly occurring, and substituting “Service.”;

(i) by inserting after subsection (13) the following subsections:—

(13A) Before exercising any of his powers under subsection (13), the Head of the Agency shall, by notice in writing served on the permanent employee, notify the employee of his decision to take such action as is specified in the notice.

(13B) If the Head of an Agency proposes to take action under subsection (13) (a), (b), (c), (d), (f), or (g) in respect of a permanent employee, he shall notify the Commissioner of his intention to take such action.

(13C) Where the Commissioner receives a recommendation from the Head of an Agency under subsection (13) (e), he may transfer the permanent employee to whom the recommendation relates to a position in another Agency having the same or a lower classification or salary.

(13D) Where the Commissioner receives a recommendation from the Head of an Agency under subsection (13) (e) and he is unable to transfer the employee to whom the recommendation relates to a position in another Agency, he shall advise the Head of Agency of his inability to transfer the employee and request the Head to take such other action under subsection (13) as the Head considers necessary.

(j) by omitting subsection (15).

**20**—Section 56 of the Principal Act is amended as follows:—

(a) by omitting from subsection (2) “Each party to proceedings before a person conducting an inquiry under section 55” and substituting “Where a person conducting an inquiry under section 55 determines that a formal hearing is required, each party to proceedings before the person conducting the inquiry”;

Amendment of section 56 of Principal Act (Procedure of inquiry under section 55).

(b) by omitting subsection (3) and substituting the following subsection:—

(3) Where a person conducting an inquiry under section 55 determines that a formal hearing is required, each party to the proceedings before the person conducting the inquiry may nominate a person to appear as an advocate of that party at the hearing of the proceedings.

(c) by omitting subsection (4) and substituting the following subsection:—

(4) Where a person conducting an inquiry under section 55 determines that a formal hearing is required, a party to the proceedings before the person conducting the inquiry may, with the approval of that person, nominate a barrister or legal practitioner to appear in the proceedings as an advocate of that party and, where the person conducting an inquiry under section 55 has approved the nomination of a barrister or legal practitioner to appear as an advocate of a party to the proceedings, any other party to those proceedings may nominate a barrister or legal practitioner to appear at the hearing of the proceedings as an advocate of the other party.

Amendment of section 58 of Principal Act (Court proceedings against employees).

**21**—Section 58 of the Principal Act is amended by inserting after subsection (2) the following subsections:—

(2A) The Minister may, by instrument in writing signed by him, delegate to a person specified in the instrument the exercise of his power of suspension under subsection (2).

(2B) The Minister may, by instrument in writing signed by him, revoke wholly or in part a delegation made under subsection (2A).

(2C) A delegation under subsection (2A) may be made subject to such conditions or limitations as to the exercise of the power delegated, or as to time or circumstance, as are specified in the instrument of delegation.

(2D) Any act or thing done by a delegate while acting in the exercise of a delegation under subsection (2A) shall have the same force and effect as if the act or thing had been done by the Minister and shall be deemed to have been done by the Minister.

(2E) An instrument purporting to be signed by a delegate of the Minister in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Minister and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Minister under subsection (2A).

**22**—Section 66 of the Principal Act is amended as follows:— Amendment of section 66 of Principal Act (Appeals to Commissioner for Review).

(a) by omitting “or (ii);” from subsection (1) (g) and substituting “or (ii); or”;

(b) by omitting paragraph (h) of subsection (1).

**23**—Section 68 of the Principal Act is amended as follows:— Amendment of section 68 of Principal Act (Procedure, &c., of appeal).

(a) by omitting from subsection (6) “requests or agrees that it should be so heard” and substituting “and the Commissioner for Review agree that it should be so heard”;

(b) by omitting from subsection (7) “be present at the proceedings” and substituting “appear before the Commissioner for Review and to tender written evidence to the Commissioner for Review”;

(c) by omitting subsection (8) and substituting the following subsection:—

(8) Where the Commissioner for Review conducts an appeal without holding a hearing, each party is entitled to tender written evidence to the Commissioner for Review.

(d) by omitting from subsection (9) “and examine any other person who tenders evidence in those proceedings”.

**24**—Section 73 of the Principal Act is amended as follows:— Amendment of section 73 of Principal Act (Performance of duties in absence).

(a) by inserting “a” after “an employee or”;

(b) by inserting “an” after “a position or”;

(c) by inserting “, or appointed under any Act, other than this Act, who is” after “State Service”, secondly occurring.

Repeal of section 76 of Principal Act (Extended leave).

**25**—Section 76 of the Principal Act is repealed.

Insertion in Principal Act of new section 79A.

**26**—After section 79 of the Principal Act, the following section is inserted:—

Restriction on exercise of functions and powers of Commissioner, Secretary, and Commissioner for Review.

**79A**—The Commissioner, Secretary, or Commissioner for Review shall not perform his functions or exercise his powers under this Act in such a manner as to interfere with the personal, professional, and clinical relationship between a medical practitioner employed under this Act and that medical practitioner's patients or between that medical practitioner and another medical practitioner or to interfere in any way with matters of clinical judgment of a medical practitioner employed under this Act.

Amendments of Principal Act for purpose of converting monetary penalties into penalty units.

**27**—The Principal Act is amended as set out in Schedule 1.

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## SCHEDULE 1

## Section 27

AMENDMENTS OF PRINCIPAL ACT FOR PURPOSE OF CONVERTING  
MONETARY PENALTIES INTO PENALTY UNITS

## 1. Section 11 (4)

Omit "\$500" and substitute "Fine not exceeding 5 penalty units".

## 2. Section 11 (5)

Omit "\$500" and substitute "Fine not exceeding 5 penalty units".

## 3. Section 56 (8)

Omit "\$500" and substitute "Fine not exceeding 5 penalty units".

## 4. Section 68 (13)

Omit "penalty not exceeding \$500" and substitute "fine not exceeding 5 penalty units".

## 5. Section 81 (10)

(1) Omit "penalty not exceeding \$500" and substitute "fine not exceeding 5 penalty units".

(2) Omit "penalty not exceeding \$100" and substitute "fine not exceeding 1 penalty unit".

