

PUBLIC SECTOR MANAGEMENT ACT 1988 No. 33

NEW SOUTH WALES



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PUBLIC SECTOR MANAGEMENT ACT 1988 No. 33

NEW SOUTH WALES



Act No. 33, 1988

An Act for the management of the Public Service of New South Wales and of other public sector employment; and for other purposes. [Assented to 6 July 1988]

See also Miscellaneous Acts (Public Sector Management) Amendment Act 1988.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Public Sector Management Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions (1979 Act, s. 4)

3. (1) In this Act—

“Administrative Office” means the group of staff comprising (wholly or in part) or attached to a body, organisation or group specified in column 1 of Schedule 2;

“appropriate Department Head” means—

- (a) where the expression is used in connection with a Department—the Head of the Department; or
- (b) where the expression is used in connection with an officer or temporary employee—the Head of the Department to which the officer or employee belongs;

“appropriate Minister” means—

- (a) where the expression is used in connection with a Department—the Minister responsible for the Department; or
- (b) where the expression is used in connection with an officer or temporary employee—the Minister responsible for the Department to which the officer or employee belongs;

“declared authority” means an authority for the time being specified in Schedule 3;

“Department” means a Department specified in column 1 of Schedule 1, and includes an Administrative Office;

“Department Head” or “Head” means a Department Head referred to in section 10 (1), and includes the person who has the functions of a Department Head in relation to an Administrative Office;

“disciplinary inquiry” means an inquiry conducted in accordance with the regulations in connection with a breach of discipline alleged to have been committed by an officer other than a special division officer;

“Industrial Authority” means the Public Employment Industrial Relations Authority constituted by this Act;

“management review” means an examination of any functions and activities of a Department for the purpose of assessing the extent to which any such functions and activities are being carried on in an effective, efficient and economical manner;

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“officer” means a person employed in any capacity under Part 2, and includes—

- (a) a special division officer; and
- (b) an officer on probation,

but does not include a temporary employee;

“position” means a position in the Public Service;

“Public Service” means the Public Service of New South Wales, as referred to in section 5;

“Public Service Notices” means any document titled “Public Service Notices” published under the authority of the Government;

“special division officer” means an officer in the Special Division of the Public Service;

“special division position” means a position of Department Head created under section 9;

“special inquiry” means a special inquiry under section 82;

“staff” or “members of the staff” means officers or temporary employees or both;

“temporary employee” means a person temporarily employed under section 38;

“term officer” means a special division officer appointed or re-appointed for a term under section 15;

“Tribunal” means the Government and Related Employees Appeal Tribunal established under the Government and Related Employees Appeal Tribunal Act 1980.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Act not to apply to certain positions (1979 Act, s. 9)

4. (1) This Act does not apply to any of the following positions or to any person holding such a position (except to the extent that a provision of this Act otherwise expressly provides):

- (a) any position of a judicial officer within the meaning of the Judicial Officers Act 1986;
- (b) any position to which an appointment may be made under the Police Regulation Act 1899;
- (c) any position of officer of either House of Parliament or any position under the separate control of the President or Speaker, or under their joint control;

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- (d) any position the salary or remuneration for which is fixed by statute or in accordance with the Statutory and Other Offices Remuneration Act 1975, other than a position specified in Schedule 1 to this Act.
- (2) Subsection (1) does not prevent section 19, 35, 80 or 99 or Part 8 from applying to a person holding a position referred to in subsection (1) (d).
- (3) Subsection (1) does not prevent a person holding a position referred to in that subsection from having or exercising any functions of a Department Head.

PART 2—PUBLIC SERVICE OF NEW SOUTH WALES

Division 1—Structure

The Public Service (1979 Act, s. 36)

5. The Public Service of New South Wales consists of the persons who are for the time being employed under this Part.

Special Division of the Public Service etc. (1979 Act, s. 39–44)

- 6. The Public Service is divided into—
 - (a) the Special Division (comprising officers who are Department Heads occupying positions created under section 9); and
 - (b) such other Divisions (if any) as may be prescribed by the regulations.

Maximum number of staff of a Department (1979 Act, s. 37)

7. (1) The Treasurer may, after obtaining a report from the appropriate Department Head on the matter, determine from time to time the maximum number of staff to be employed in a Department (being the number which the Treasurer considers necessary for the effective, efficient and economical management of the functions and activities of the Department).

(2) The number of staff employed in a Department shall not exceed the maximum number so determined in respect of the Department.

Staff positions in a Department (1979 Act, s. 38)

- 8. (1) The staff positions in a Department consist of—
 - (a) the position (if any) created under section 9 in relation to the Department; and
 - (b) such other positions as the appropriate Department Head from time to time determines in accordance with this Act.
- (2) Subject to subsection (3), a Department Head may create, abolish or otherwise deal with any staff position in the Department, other than the position created under section 9 in relation to the Department.

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(3) A Department Head shall classify and grade each position created under subsection (2) but may do so only with the approval of the Industrial Authority.

(4) A Department Head may establish, or abolish, or change the name of, any branch of the Department, but may not abolish, or change the name of, any branch as established by the Governor under section 49 of the Constitution Act 1902.

(5) If the Governor removes a branch from any Department and adds it to another Department under section 49 of the Constitution Act 1902—

(a) so much of the staff of the first-mentioned Department as relates to the branch becomes correspondingly part of the staff of the other Department; and

(b) the staff of the branch continue to occupy their positions in the branch but as members of the staff of that other Department.

(6) In this section, “branch” means a branch or other part of a Department.

Division 2—Department Heads**Creation of Department Head positions (1979 Act, s. 45)**

9. (1) Each position specified in column 2 of Schedule 1 shall be deemed to be created by virtue of this Act.

(2) If the title or other description of a position is omitted from column 2 of Schedule 1, the position shall be taken to be abolished by virtue of this Act.

(3) If this Act is amended by amending the title or other description of a position appearing in column 2 of Schedule 1, the title or other description of the position shall be taken to be correspondingly amended by virtue of this Act.

Department Heads (1979 Act, s. 46)

10. (1) The person holding the position specified in column 2 of Schedule 1 opposite the name or description of a Department is the Department Head in relation to that Department for the purposes of this Act.

(2) The person holding the position specified in column 2 of Schedule 2 opposite the title or other description of a body, organisation or group has, for the purposes of this Act, the functions of a Department Head in relation to the Administrative Office concerned.

(3) For the purposes of this Act, a reference in Schedule 1 or 2 to a body, organisation or group shall be taken not to include a reference to any part of the body, organisation or group specified separately in either of those Schedules.

(4) Despite anything in this Act, any recommendation or other act, matter or thing, required by or under this Act to be made or done by a person who is a Department Head shall, if it is to be made or done by such a person in relation to—

- (a) a position specified in column 2 of Schedule 2; or
- (b) the person holding that position,

be made or done by such Department Head as the Governor, by order published in the Gazette, determines in relation to that position.

(5) A provision contained in any Act enacted before the date of assent to this Act does not have any effect to the extent that it would, but for this subsection, operate—

- (a) to make a person a Department Head; or
- (b) to authorise or require a person to exercise any functions conferred or imposed by or under this Act on a Department Head.

(6) If a person is duly authorised or required to exercise functions attaching to a position specified in Schedule 1 or 2, but is not himself or herself the holder of the position, nothing in subsection (5) prevents the person from exercising any functions that are referred to in subsection (5) (b) and exercisable by the holder (if any) of the position.

(7) In this section, a reference to a Department does not include a reference to an Administrative Office.

General responsibility of Department Heads (1979 Act, s. 47)

11. (1) A Department Head is responsible to the appropriate Minister for the general conduct and the effective, efficient and economical management of the functions and activities of the Department.

(2) For the purpose of exercising the responsibility imposed by subsection (1), a Department Head may take such action as the Department Head considers appropriate in the circumstances, but may not take action that is inconsistent with the functions of the Minister or the Industrial Authority specified in this Act.

Delegation by Department Heads (1949 Act, s. 48)

12. (1) A Department Head may delegate to an officer of the Department any of the Department Head's functions under this Act, other than this power of delegation.

(2) If—

- (a) a function of a Department Head is delegated to an officer of the Department in accordance with subsection (1); and
- (b) the instrument of delegation authorises the sub-delegation of the function,

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then, subject to any conditions to which the delegation is subject, the officer may sub-delegate the function to another officer of the Department.

(3) In this section—

- (a) a reference to the functions of a Department Head includes a reference to any functions delegated to the Department Head under this Act; and
- (b) a reference to an officer of a Department includes—
 - (i) a reference to a person holding an appointment to or in the Department; and
 - (ii) where the Department is an Administrative Office—a reference to a person holding an appointment to or in the relevant body, organisation or group specified in Schedule 2; and
 - (iii) a reference to a temporary employee.

Division 3—Special division officers**Filling of vacant special division positions (1979 Act, s. 49)**

13. (1) If a vacancy exists in any special division position, the position may, subject to and in accordance with this Division, be filled—

- (a) by the appointment, by way of transfer or promotion, of an officer, other than a term officer; or
- (b) by the appointment as a term officer of a person who, immediately before his or her appointment, was not an officer or by the appointment, by way of transfer or promotion, of a term officer.

(2) An officer may be appointed to act in a special division position which is vacant or the holder of which is suspended, sick or absent.

(3) An officer, while acting in a special division position, has all the functions of the holder of the position and shall be taken to be the holder of the position.

(4) The appointment of an officer to act in a special division position may be terminated at any time.

Method of appointment of special division officers (1979 Act, s. 50)

14. (1) Appointments (whether by way of transfer or promotion or otherwise) to special division positions shall be made by the Governor.

(2) An appointment to act in a special division position, and the termination of any such appointment, shall be made by the Governor.

Term of office of term officer (1979 Act, s. 51)

15. (1) Subject to this Act, a person who was not an officer immediately before the person became a special division officer—

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shall be appointed for such term, not exceeding 5 years, as is specified in the instrument of appointment; and

- (b) is eligible for re-appointment from time to time, on each occasion for such term, not exceeding 5 years, as is specified in the instrument of re-appointment.

- (2) Schedule 4 has effect in relation to a term officer.

Removal of special division officers (1979 Act, s. 52)

16. (1) The Governor may remove an officer from a special division position at any time.

- (2) The Governor—

- (a) may declare an officer removed from a special division position under subsection (1) to be an unattached officer in the special division; and
- (b) may revoke any such declaration.

(3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates—

- (a) shall be regarded as a special division officer, although not holding a special division position; and
- (b) is entitled to salary at the rate at which it would be payable if the person had not been removed from his or her position.

- (4) If—

- (a) an officer is removed from a special division position under subsection (1) and a declaration was not made in relation to the officer under subsection (2); or
- (b) a declaration under subsection (2) made in relation to an officer is revoked,

the officer ceases to be a special division officer, unless appointed to another special division position subject to and in accordance with this Act.

(5) A term officer who ceases to be a special division officer because of subsection (4) ceases to be an officer of the Public Service, unless appointed to another position in the Public Service subject to and in accordance with this Act.

(6) An officer referred to in subsection (4) (other than a term officer) who ceases to be a special division officer is, if the officer has not reached 60 years of age, entitled to be appointed to some position in the Public Service—

- (a) not lower in salary than the current salary for the position which the officer held immediately before becoming a special division officer; and

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(b) with duties appropriate to that salary.

(7) The Governor, on the recommendation of the Minister, may make an appointment under subsection (6).

(8) This section does not prevent a person referred to in subsection (4) who has ceased to be a special division officer from being appointed to some position in the Public Service subject to and in accordance with this Act even though the person has reached 60 years of age.

Compensation etc. to special division officer removed or retired from office

17. Nothing in this Division affects the application of Part 8 to a special division officer who is removed from office under section 16, or who is retired from office under section 19 before reaching 65 years of age.

Vacation of special division positions (1979 Act, s. 53)

18. (1) The position of a term officer becomes vacant if the officer—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) is removed from office, or retires or is retired from office, under this Act; or
- (d) is absent from duty for 30 days in any 12 months, except on leave granted by the appropriate Minister; or
- (e) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (f) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
- (g) resigns his or her position in writing addressed and delivered to the appropriate Minister and the Governor accepts the resignation.

(2) The position of a special division officer (other than a term officer) becomes vacant if the officer—

- (a) dies; or
- (b) is removed from office, or retires or is retired from office, under this Act; or
- (c) resigns his or her position in writing addressed and delivered to the appropriate Minister and the Governor accepts the resignation.

(3) This section does not affect any other provision by or under which a special division officer's position becomes vacant.

Retirement of special division officers (1979 Act, s. 54)**19. (1) A special division officer—**

- (a) may retire from the Public Service on reaching 60 years of age; or
- (b) may continue in the Public Service after he or she has reached that age, but—
 - (i) the officer may retire from the Public Service; or
 - (ii) the Governor, on the recommendation of the Minister, may cause the officer to be retired from the Public Service, at any time after the officer has reached that age and before the officer reaches 65 years of age.

(2) Subject to subsection (3), a special division officer who reaches 65 years of age shall then retire or be retired by the Governor.

(3) If—

- (a) the Minister is of the opinion that it is in the public interest that a special division officer who has reached 65 years of age should continue to perform the duties of the officer's position; and
- (b) the officer agrees to continue to perform those duties,

the officer's retirement may be deferred for a period not exceeding 12 months and thereafter, so long as the officer agrees to continue to perform those duties, from time to time for such periods, not exceeding 12 months, as the Minister may fix.

(4) The Governor may, on the recommendation of the Minister, cause an officer whose retirement is deferred under subsection (3) to be retired at any time.

(5) Nothing in this section extends the term for which a term officer is appointed.

Incapable special division officer may be retired (1979 Act, s. 55)**20. If—**

- (a) a special division officer (other than a term officer) is found to be unfit to discharge or incapable of discharging the duties of the officer's position; and
- (b) that unfitness or incapacity—
 - (i) appears likely to be of a permanent nature; and
 - (ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,

the Governor may, on the recommendation of the Minister, cause the officer to be retired.

Remuneration of special division officers (1979 Act, s. 56)**21. Each special division officer is entitled to be paid—**

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- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the officer.

Division 4—Officers (other than special division officers)**Division not to apply to special division officers (1979 Act, s. 57)**

22. (1) In this Division, “officer” does not include a term officer.
- (2) Nothing in this Division applies to or in respect of appointments to special division positions.
- (3) Sections 35–37 do not apply to special division officers.

Administrative units (1979 Act, s. 59)

23. (1) The Minister shall, whenever necessary but in any case at intervals of not more than 6 months, cause to be published in the Public Service Notices a notice containing a list and declaring that—

- (a) any Department specified in the list; and
- (b) any Department specified in the list, other than any office referred to in paragraph (c) and specified in the list as not forming part of that Department; and
- (c) any office specified in the list, being an office in which officers are employed,

is an administrative unit for the purposes of section 26.

(2) A list published in the Public Service Notices under subsection (1) ceases to be in force on the next subsequent publication in the Public Service Notices of such a list.

(3) A copy of the Public Service Notices containing a list and declaration purporting to be a list and declaration referred to in subsection (1) is evidence that—

- (a) a Department specified in the list; or
- (b) a Department specified in the list, other than an office specified in the list as not forming part of that Department; or
- (c) an office specified in the list,

as the case may be—

- (d) was on the date of publication of the issue of the Public Service Notices containing the list and declaration an administrative unit for the purposes of section 26; and
- (e) has, in the absence of proof of the publication of a later issue of the Public Service Notices containing such a list and declaration, since remained at all material times such an administrative unit.

(4) A reference in any list published under subsection (1) to a Department or office is a reference to that Department or office as established from time to time while the list is in force.

(5) A reference in this section to the date of publication of the Public Service Notices is, in relation to any issue of that document, a reference to the date specified in that issue as the date of publication.

Filling of vacant positions (1979 Act, s. 60)

24. If a vacancy exists in a position in a Department and the appropriate Department Head decides that it is expedient to fill the vacancy, the position may, subject to and in accordance with this Division, be filled—

- (a) by the appointment, by way of transfer or promotion, of an officer; or
- (b) by the appointment of a person who, immediately before his or her appointment, was not an officer.

Method of appointment (1979 Act, s. 61)

25. (1) An appointment (whether by way of transfer or promotion or otherwise) to a position in the Public Service shall be made by the Governor on the recommendation of the appropriate Department Head.

(2) Subsection (1) is subject to any express provision to the contrary in this or any other Act.

Selection for appointment to be on merit (1979 Act, s. 62)

26. (1) A Department Head shall, for the purpose of determining the merit of the persons eligible for appointment to a vacant position under this section, have regard to—

- (a) the nature of the duties of the position; and
- (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.

(2) In deciding to make a recommendation for the appointment of a person to a vacant position which has been advertised in accordance with this Act—

- (a) the appropriate Department Head may only select a person who has duly applied for appointment to the vacant position; and
- (b) the appropriate Department Head must, from among the applicants eligible for appointment to the vacant position, select the applicant who has, in the opinion of the Department Head, the greatest merit.

(3) In deciding to make a recommendation for the appointment of a person to a vacant position which has not been advertised in accordance with this Act—

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- (a) the appropriate Department Head may only select an officer holding a position in the administrative unit in which the vacant position exists at the time the decision of the Department Head is made; and
 - (b) the appropriate Department Head must, from among the officers holding positions in that administrative unit, select the officer who has, in the opinion of the Department Head, the greatest merit.
- (4) If the person recommended for appointment to a position under this section is an officer and some other officer has a right of appeal to the Tribunal against the recommendation, the recommendation must not be acted on (except by way of temporary appointment under section 33)—
- (a) until the expiration of the time for lodging a notice of such an appeal under the Government and Related Employees Appeal Tribunal Act 1980 against the Department Head's decision to make the recommendation; or
 - (b) if such a notice of appeal is lodged within that time, until the Tribunal has determined the appeal or the appeal is withdrawn.
- (5) Notwithstanding anything to the contrary in this section, the appropriate Department Head may decide to make a recommendation for the appointment of a person (whether or not an officer) to a vacant position which has not been advertised if the person has, in accordance with the regulations, passed a competitive examination prescribed for appointment to vacant positions of the class to which that vacant position belongs.

Legal proceedings not to be brought in respect of appointments etc. (1979 Act, s. 65A (1)–(3), (6))

27. (1) The appointment or failure to appoint a person to a vacant position in the Public Service, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the Industrial Arbitration Act 1940.

(2) Subsection (1) applies whether or not any person has been appointed to the vacant position.

(3) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment or failure to appoint a person to a position in the Public Service, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

(4) Subsection (3) does not affect the operation of the Government and Related Employees Appeal Tribunal Act 1980.

Appointments on probation (1979 Act, s. 68)

28. (1) Subject to this Division, every person admitted to the Public Service as an officer shall, in the first instance, be appointed to a position on probation for a period of 6 months or such longer period as the appropriate Department Head directs.

(2) With the approval of the Industrial Authority, a person may be appointed to a position in the Public Service without being required to serve such a period of probation.

(3) The period for which a person is appointed on probation may not exceed 2 years without the approval of the Industrial Authority.

Confirmation or annulment of appointments on probation (1979 Act, s. 69)

29. (1) If a person is appointed to a position on probation under section 28, the Governor may, on the recommendation of the appropriate Department Head based on inquiry and report—

- (a) after the period of probation—confirm the appointment; or
- (b) during or after the period of probation—annul the appointment.

(2) If a person's appointment is annulled under subsection (1), the person ceases to be an officer, unless appointed to another position as an officer.

(3) Section 75 does not prevent the Governor from exercising at any time the power to annul an appointment under subsection (1).

Appointment of retired officers (1979 Act, s. 70)

30. (1) An officer who has been retired from the Public Service or whose services have been dispensed with under section 51 may be appointed to a vacant position.

(2) An appointment under this section shall be made by the Governor on the recommendation of the appropriate Department Head.

(3) An appointment under this section may be made without examination or probation.

(4) This section applies to an officer only if the officer has not reached 60 years of age before the Department Head makes the recommendation referred to in subsection (2).

Advertising vacancies (1979 Act, s. 71)

31. (1) If it is proposed to make an appointment under this Division to a vacant position in a Department, the Department Head shall advertise the vacancy in the Public Service Notices and in such other publication (if any) as the Department Head determines.

(2) The Department Head need not advertise a vacant position if the Minister so approves.

Publication of decisions to make recommendations for in-service appointments (1979 Act, s. 72)

32. (1) The appropriate Department Head shall cause to be published in the Public Service Notices in accordance with section 19 of the Government and Related Employees Appeal Tribunal Act 1980 particulars of any decision of the Department Head to make a recommendation to the Governor to appoint an officer to fill a vacant position.

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(2) An officer who—

- (a) is proceeding on duty outside the State for a period exceeding 6 weeks or on leave for a period exceeding 6 weeks; and
- (b) has made application to the appropriate Department Head,

is entitled to have sent to the officer during that period by the Department Head, by post addressed to the officer at the address specified in that application, a copy of all Public Service Notices published during that period.

Temporary appointments (1979 Act, s. 75)**33. If—**

- (a) a position in a Department is vacant; or
 - (b) the holder of such a position is suspended from duty, sick or absent,
- the Department Head may appoint an officer to the position temporarily.

Restriction on temporary appointment (1979 Act, s. 76)

34. (1) An officer who is appointed to a position temporarily may not continue in that position for a period of more than 6 months except with the approval of the Industrial Authority.

(2) The Industrial Authority shall not give an approval for the purpose of subsection (1) unless satisfied that it should be given having regard to the exigencies of the Public Service.

Retirement of officers (1979 Act, s. 77)**35. (1) An officer—**

- (a) may retire from the Public Service on reaching 60 years of age; or
- (b) may continue in the Public Service after reaching that age, but—
 - (i) the officer may retire from the Public Service; or
 - (ii) the Governor, on the recommendation of the appropriate Department Head, may cause the officer to be retired from the Public Service,

at any time after the officer has reached that age and before the officer reaches 65 years of age.

(2) An officer who has reached 65 years of age shall then retire or be retired by the Governor.

(3) If—

- (a) the appropriate Department Head is of the opinion that it is in the public interest that an officer who is of or above 65 years of age should continue to perform the duties of the officer's position; and
- (b) the officer agrees to continue to perform those duties,

the officer's retirement may be deferred for a period of not more than 12 months and thereafter, so long as the officer agrees to continue to perform those duties, from time to time for such periods, not exceeding 12 months, as the appropriate Department Head may fix.

(4) The Governor may, on the recommendation of the appropriate Department Head, cause an officer whose retirement is deferred under subsection (3) to be retired at any time.

Incapable officer may be retired (1979 Act, s. 78)

36. If—

- (a) an officer employed in a Department is found to be unfit to discharge or incapable of discharging the duties of the officer's position; and
- (b) the officer's unfitness or incapacity—
 - (i) appears likely to be of a permanent nature; and
 - (ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,

the Governor may, on the recommendation of the appropriate Department Head, cause the officer to be retired.

Vacation of position (1979 Act, s. 79)

37. (1) An officer's position becomes vacant if the officer—

- (a) dies; or
- (b) is removed, or retires or is retired, from the position in accordance with this Division; or
- (c) resigns the position in writing addressed and delivered to the appropriate Department Head and that Department Head accepts the resignation.

(2) This section does not affect any other provision by or under which an officer's position becomes vacant.

Division 5—Temporary employees

Appointment of temporary employees (1979 Act, s. 80)

38. (1) The appropriate Department Head may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to carry out work in the Department.

(2) The employment of a person under subsection (1) is subject to the regulations (if any) concerning the employment of temporary employees.

(3) The appropriate Department Head—

- (a) may employ a person under this section for a period not exceeding 4 months; and

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- (b) subject to the regulations, may from time to time employ the person at the end of that period, or at the end of any subsequent period, for a further period not exceeding 4 months.
- (4) A person may not be employed under this section for—
 - (a) a continuous period in excess of 12 months; or
 - (b) 2 or more periods that together are in excess of 12 months in any period of 2 years,

except with the approval of the Industrial Authority.

(5) The appropriate Department Head may dispense with the services of a temporary employee at any time, but may not dispense with the services of a person employed as referred to in subsection (4) without the approval of the Industrial Authority.

Division 6—Miscellaneous matters**Requirements as to citizenship etc. (1979 Act, s. 111)**

39. (1) A person is eligible to be appointed as an officer only if the person is—

- (a) an Australian citizen; or
 - (b) a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.
- (2) A person who is seeking appointment as an officer must, if so required by or under the regulations, produce such evidence with respect to the person's Australian citizenship or entitlement to reside in Australia as the regulations require.

(3) An officer who is not an Australian citizen and who ceases to satisfy or does not satisfy the requirements of subsection (1) (b) is no longer eligible to continue in employment as an officer in the Public Service.

(4) The Governor shall dismiss from the Public Service an officer who is no longer eligible to continue in employment as an officer by virtue of subsection (3).

Notification of appointments etc. in special Gazette (1979 Act, s. 110)

40. (1) Notice of all appointments, promotions, transfers, resignations, retirements and removals of officers under this Act must be published in a special Gazette to be issued, as far as practicable, weekly.

(2) A notice so published is conclusive evidence of the appointment, promotion, transfer, resignation, retirement or removal specified in the notice.

Arrangements for the use of certain staff (1979 Act, s. 112A)

41. (1) The appropriate Department Head may, with the approval of the appropriate Director-General within the meaning of the Education Commission Act 1980, and on such terms and conditions as may be arranged, make use of the services of any person employed under that Act.

(2) The services of a person may not be made use of under subsection (1) for—

- (a) a continuous period exceeding 12 months; or
- (b) 2 or more periods that together exceed 12 months in any period of 2 years,

except with the approval of the Industrial Authority.

Officers refusing promotion or appointment (1979 Act, s. 115 (1))

42. An officer who has been offered a promotion or appointment in the Public Service may decline the promotion or appointment without prejudice to any rights that the officer would, if the promotion or appointment had not been declined, have had to any future promotion or appointment.

PART 3—ADMINISTRATION AND MANAGEMENT OF THE PUBLIC SERVICE**Division 1—Functions of the Minister****Functions of the Minister**

43. The Minister has—

- (a) the function of securing the overall effectiveness and efficiency of the Public Service; and
- (b) the function of reviewing management effectiveness and efficiency in the Public Service.

Delegation by the Minister (1979 Act, s. 35)

44. The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

Power to enter Department's premises etc. (1979 Act, s. 33 (6), (7); s. 106)

45. (1) For the purpose of the exercise of the Minister's functions under this Act, an officer authorised by the Minister or a delegate of the Minister may—

- (a) enter the premises of any Department; and
- (b) require the production of and examine any documents in the custody of any member of the staff of any Department; and
- (c) require any member of the staff of any Department to answer questions.

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(2) The powers conferred by this section are exercisable in relation to a Department only after consultation with the appropriate Department Head.

Management assistance and advice (1979 Act, s. 108)

46. The Minister may provide a Department with such assistance and advice as will foster improvement in the efficiency or management practices of the Department.

Reports on personnel practices and policies (1979 Act, s. 109)

47. (1) The Minister may require the appropriate Department Head to provide the Minister with a report on such matters relating to the personnel policies and practices of a Department as the Minister requires and, in particular, the Minister may require inclusion in the report of information of a kind specified by the Minister as to—

- (a) the personnel policies and practices concerning—
 - (i) the recruitment, selection, appointment, transfer, promotion or discipline of the staff of the Department; and
 - (ii) the means by which the job satisfaction and opportunities for personal development of the staff are promoted; and
- (b) the application of any such policies and practices to different groups of members of the staff.

(2) The Department Head concerned must comply with a requirement under subsection (1) within such time and in such manner as the Minister directs.

Division 2—Management reviews**Power of Minister to carry out management reviews (1979 Act, s. 105)**

48. (1) The Minister may arrange for the conduct of management reviews.

- (2) A management review may be conducted in respect of—
 - (a) the functions and activities of one Department only; or
 - (b) a part only of the functions and activities of one Department; or
 - (c) the functions and activities of more than one Department in related matters.
- (3) If the Minister considers it appropriate to do so, the Minister may—
 - (a) consult with the Department Head concerned before commencing a management review; and
 - (b) give the Department Head an opportunity to nominate such number of officers to participate in the conduct of the review as the Minister determines.

Reports of management reviews (1979 Act, s. 107)

49. (1) The Minister may, after completing a management review, cause a report to be prepared on the conduct and findings, and any recommendations, of the review.

(2) The Minister may provide a copy of the report to any other Minister concerned with the subject-matter of the report.

Division 3—Miscellaneous matters relating to administration and management**Transfers within Department or between Departments (1979 Act, s. 112)**

50. (1) If the Department Head considers it to be in the interests of the Department to do so, the Department Head may direct the transfer of an officer from one position in the Department to another position in the Department at the officer's existing salary, provided the officer possesses the qualifications required for the other position and the work assigned to the other position is appropriate to that salary.

(2) If the appropriate Department Head considers it to be in the interests of the Public Service to do so, that Department Head may, with the approval of the Industrial Authority and the Department Head of the other Department concerned, transfer an officer from a position in the Department to a position in another Department at the officer's existing salary, provided the officer has the qualifications required for the other position and the work assigned to the other position is appropriate to that salary.

Excess staff (1979 Act, s. 113)

51. (1) If the Minister, after consideration of the report of a relevant management review or special inquiry, is satisfied that the number of persons who are employed in a Department exceeds the number that appears to be necessary for the effective, efficient and economical management of its functions and activities, then, subject to subsection (3), the appropriate Department Head, as directed by the Minister, shall take such steps as are practicable to secure the transfer of the excess persons to vacant positions in other Departments at their existing salaries.

(2) If the appropriate Department Head is satisfied that the number of persons who are employed in the Department exceeds the number that appears to be necessary for the effective, efficient and economical management of its functions and activities, then, subject to subsection (3), that Department Head shall take such steps as are practicable to secure the transfer of the excess persons to vacant positions in other Departments at their existing salaries.

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(3) If any such excess person cannot be usefully employed in any other Department in accordance with this section, the Governor may, on the recommendation of the appropriate Department Head made with the approval of the Industrial Authority, dispense with the person's services.

(4) A transfer of a person under this section may be made only by the appropriate Department Head with the approval of the Industrial Authority and the Department Head of the Department to which the person is being transferred.

Excessive salaries (1979 Act, s. 114)**52. (1) If—**

- (a) the Minister, after consideration of the report of a relevant management review or special inquiry; or
- (b) the appropriate Department Head,

is satisfied that an officer employed in a Department is in receipt of a greater salary than the maximum fairly appropriate to the work performed by the officer, then, subject to subsection (2), the Department Head shall take such steps as are practicable to assign the officer work of a class appropriate to the officer's salary.

(2) If—

- (a) the officer cannot be assigned sufficient work of the kind referred to in subsection (1); or
- (b) the officer is unfitted for or incapable of performing work appropriate to the officer's salary,

the appropriate Department Head shall take such steps as are practicable to secure the officer's transfer to a vacant position in any other Department at the officer's existing salary.

(3) If a transfer cannot be made in accordance with subsection (2) or the officer is unfitted for or incapable of performing the work attached to a position referred to in that subsection, the appropriate Department Head, with the approval of the Industrial Authority—

- (a) shall reduce the officer's salary to the maximum determined by that Department Head to be appropriate to the work performed by the officer; and
- (b) may take such steps as are practicable to secure the officer's transfer to a vacant position in the Department to which the officer belongs or in any other Department at that salary.

(4) If a reduction of salary of an officer under this section is certified by the appropriate Department Head to have been made on the ground only that appropriate work or an appropriate position is not available, the officer—

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- (a) remains eligible for promotion as if the officer's salary had not been reduced; and
- (b) is entitled to employment in the class of work to which the officer's previous salary was appropriate, or transfer to a position to which that class of work is attached, as soon as the appropriate work or an appropriate position becomes available, in preference to any other officer whose salary has not been reduced.

(5) A transfer of an officer under this section may be made only by the appropriate Department Head with the approval of the Industrial Authority and the Department Head of the Department to which the officer is being transferred.

Officer refusing transfer (1979 Act, s. 115 (2))

53. (1) If an officer refuses a transfer from one position to another under section 50, 51 or 52, the Governor may, on the recommendation of the appropriate Department Head made with the approval of the Industrial Authority, dismiss the officer from the Public Service, but only if that Department Head has certified that the officer had no valid reason for so refusing.

(2) If the appropriate Department Head considers that an officer had a valid reason for refusing the transfer, the Department Head may allow the officer to decline the transfer without prejudice to any rights that the officer would, if the transfer had not been declined, have had to any future promotion or appointment.

Right of the Crown to dispense with an officer's services not affected by the Act (1979 Act, s. 118)

54. The right or power of the Crown to dispense with the services of any person employed in the Public Service, as it existed immediately before the commencement of this section, is not abrogated or restricted by any of the provisions of this Act.

No compensation to be paid where officer's services dispensed with or salary reduced (1979 Act, s. 119)

55. An officer or temporary employee is not, except as provided by this or any other Act, entitled to any compensation as a result of the officer's services being dispensed with or the officer's salary being reduced

PART 4—INDUSTRIAL MATTERS**Division 1—Public Employment Industrial Relations Authority****Constitution of the Public Employment Industrial Relations Authority**

56. (1) There is constituted by this Act a corporation with the corporate name of the Public Employment Industrial Relations Authority.

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(2) The Industrial Authority is, for the purposes of any Act, a statutory body representing the Crown.

Management of affairs of the Industrial Authority

57. (1) The affairs of the Industrial Authority shall be managed by the Secretary of the Department of Industrial Relations and Employment.

(2) Any act, matter or thing done in the name of, or on behalf of, the Industrial Authority by the Secretary of the Department of Industrial Relations and Employment, or with his or her authority, shall be taken to have been done by the Industrial Authority.

Industrial Authority to be subject to the control and direction of the Minister

58. The Industrial Authority is subject to the control and direction of the Minister for Industrial Relations and Employment, except in relation to—

- (a) salaries, wages or other remuneration, and other conditions of employment; and
- (b) a dispute relating to an industrial matter.

Functions of the Industrial Authority

59. (1) The Industrial Authority has—

- (a) the functions conferred or imposed on it by or under this or any other Act; and
- (b) such other functions as are reasonably necessary for the purposes of exercising those functions.

(2) A report under the Annual Reports (Departments) Act 1985 in respect of the Department of Industrial Relations and Employment may include any report required to be made annually in respect of the Industrial Authority under the Annual Reports (Statutory Bodies) Act 1984.

Delegation by the Industrial Authority

60. (1) The Industrial Authority may delegate to a Department Head or any officer of a Department any of the functions of the Industrial Authority, other than—

- (a) this power of delegation;
- (b) the function under this Act, or under any other law, of entering into agreements relating to any industrial matter;
- (c) the function of making determinations under section 63; and
- (d) the functions of the Industrial Authority in its capacity as employer of the staff of the Public Service in proceedings concerning industrial awards.

(2) In this section—

- (a) a reference to the functions of the Industrial Authority includes a reference to any functions delegated to that Authority under this Act; and
- (b) a reference to an officer of a Department includes—
 - (i) a reference to a person holding an appointment to or in the Department; and
 - (ii) where the Department is an Administrative Office—a reference to a person holding an appointment to or in the relevant body, organisation or group specified in Schedule 2; and
 - (iii) a reference to a temporary employee.

Regulations relating to functions of the Industrial Authority

61. (1) The regulations may make provision for or with respect to the principles, practices and procedures to be observed in connection with the exercise of the functions of the Industrial Authority.

(2) In particular, the regulations may—

- (a) prescribe the circumstances in which an approval by the Industrial Authority under this or any other Act may be regarded as having been given; or
- (b) prescribe the procedure for obtaining any such approval.

Division 2—Responsibilities of the Industrial Authority with respect to industrial matters**Role of the Industrial Authority in industrial proceedings (1979 Act, s. 81)**

62. The Industrial Authority shall, for the purposes of any proceedings relating to officers or temporary employees held before a competent tribunal having jurisdiction to deal with industrial matters, be taken to be the employer of the staff of the Public Service.

Industrial Authority may determine salaries, wages etc. (1979 Act, s. 82)

63. (1) The Industrial Authority may from time to time make determinations fixing the salaries, wages and other remuneration of officers (other than special division officers) and temporary employees.

(2) The salary, wages or other remuneration of an officer (other than a special division officer) or a temporary employee is, except in so far as provision is otherwise made by law, such as may be fixed by a determination made under this section.

(3) An officer or temporary employee may sue for and recover the amount of remuneration of the officer or employee that is determined under this section.

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Industrial Authority may enter into agreements (1979 Act, s. 83)

64. (1) The Industrial Authority may enter into an agreement with any association or organisation representing a group or class of officers or temporary employees with respect to industrial matters.

(2) Any such agreement binds all officers and temporary employees in the class or group affected by the agreement, and no such officer or employee (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.

(3) This section does not apply in relation to the remuneration of, or allowances payable to, special division officers.

Power of Industrial Authority to enter Department's premises etc. (1979 Act, s. 84)

65. The Industrial Authority may, by its authorised officers or delegates—

- (a) enter the premises of any Department; and
- (b) require the production of and examine any documents in the custody of any member of the staff of any Department; and
- (c) require any member of the staff of any Department to answer questions,

for the purposes of enabling the Industrial Authority to exercise its functions.

PART 5—DISCIPLINE AND CONDUCT OF OFFICERS OF THE PUBLIC SERVICE**Division 1—Interpretation****Breaches of discipline (1979 Act, s. 85)**

66. An officer is guilty of a breach of discipline if the officer—

- (a) contravenes this Act or the regulations; or
- (b) engages in any misconduct; or
- (c) consumes or uses alcohol or drugs to excess; or
- (d) intentionally disobeys, or intentionally disregards, any lawful order made or given by a person having authority to make or give the order; or
- (e) is negligent, careless, inefficient or incompetent in the discharge of his or her duties; or
- (f) engages in any disgraceful or improper conduct.

Division 2—Special division officers**Special inquiry (1979 Act, s. 86)**

67. If the appropriate Minister (not being the Minister) reports to the Minister that there is reason to believe, or the appropriate Minister (being the Minister) has reason to believe, that a special division officer may be guilty of a breach of discipline, the Minister—

- (a) shall—if the officer is under suspension under section 70; or
- (b) may—if the officer is not under suspension under that section,

direct, under section 82, that a special inquiry be conducted in relation to the matter.

Punishment of special division officers for breaches of discipline (1979 Act, ss. 87, 100)**68. (1) If—**

- (a) an alleged breach of discipline is dealt with by a special inquiry referred to in section 82; and
- (b) the officer concerned is found to have committed the breach or admits to the person or persons dealing with the breach that the officer committed the breach,

the Governor, on the recommendation of the Minister, may—

- (c) approve of the imposition on the officer of one or more of the punishments specified in subsection (2); or
- (d) dismiss the officer from the Public Service or direct that the officer resign, or be allowed to resign, from the Public Service within such period as may be specified in the direction.

(2) For the purpose of subsection (1) (c), the following punishments are specified:

- (a) a caution;
- (b) a reprimand;
- (c) a fine;
- (d) except in the case of a term officer—demotion to a lower position in the Public Service, whether in the Special Division or not.

(3) If—

- (a) the Governor, in the exercise of the powers conferred by this section, directs an officer to resign, or be allowed to resign, from the Public Service within a period specified in the direction; and
- (b) the officer does not resign within that period,

the Governor may, on the recommendation of the Minister, dismiss the officer from the Public Service.

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(4) A punishment specified in subsection (2) (a)–(c) shall be imposed by the Minister and the punishment specified in subsection (2) (d) shall be imposed by the Governor on the recommendation of the Minister.

(5) If a fine is imposed under this section on an officer, the person responsible for paying the officer's salary must, on receiving notice of the imposition of the fine, deduct the amount of the fine from the salary payable to the officer, in such manner as the Minister directs.

Punishment where a special division officer is guilty of a serious offence (1979 Act, s. 88)

69. If a special division officer—

- (a) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more; or
- (b) is convicted elsewhere than in New South Wales of an offence that, if it were committed in New South Wales, would be an offence so punishable,

the Governor may, on the recommendation of the Minister, impose on that officer, any one or more of the punishments that may be imposed under section 68 as if that officer had, in accordance with this Division, been dealt with for a breach of discipline and were liable to those punishments.

Suspension from duty of special division officers (1979 Act, s. 89)

70. (1) If—

- (a) the appropriate Minister has reason to believe that a special division officer may be guilty of a breach of discipline; or
- (b) a special division officer is charged with having committed an offence referred to in section 69,

the appropriate Minister may suspend that officer from duty, until the matter has been dealt with.

(2) Any salary payable to a person as an officer while the person is suspended from duty under this section shall (if the appropriate Minister so directs) be withheld.

(3) If such a person—

- (a) is found, as referred to in section 68 (1), to have committed a breach of discipline or admits, as referred to in that provision, to having committed the breach; or
- (b) is convicted of an offence referred to in section 69,

then the salary withheld under subsection (2) is forfeited to the Crown, unless—

- (c) the Governor otherwise directs; or

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- (d) that salary was due to the person in respect of a period before the suspension was imposed.

(4) The Governor or the appropriate Minister may, at any time, remove a suspension imposed on an officer under this section.

(5) Immediately after imposing a suspension under this section, the appropriate Minister (if not the Minister) must report the suspension to the Minister.

Dismissal of term officers (1979 Act, s. 90)

71. If a term officer is dismissed from the Public Service under this Division—

- (a) the term for which the officer was appointed shall be regarded as having come to an end; and
- (b) no compensation is payable in respect of the dismissal.

Other powers not affected (1979 Act, s. 91)

72. (1) Nothing in this Division prevents the Governor from exercising at any time the Governor's powers under any provisions of this Act not contained in this Division.

(2) If a person ceases to be a special division officer in accordance with section 16 (but does not cease to be an officer), a breach of discipline or an offence alleged to have been committed while the person was such an officer may only be dealt with as if the person had not ceased to be such an officer.

Division 3—Officers (other than special division officers)

Division not to apply to special division officers (1979 Act, s. 92)

73. Unless otherwise expressly provided by this Act, nothing in this Division applies to special division officers.

Procedure for dealing with breaches of discipline (1979 Act, s. 93)

74. (1) A breach of discipline alleged to have been committed by an officer shall be dealt with by the appropriate Department Head.

(2) Subject to this Division, the regulations may—

- (a) make provision for or with respect to the manner of dealing with alleged breaches of discipline; and
- (b) prescribe all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Division.

(3) Section 83 (Powers of persons conducting special inquiries) applies to a disciplinary inquiry in the same way as it applies to a special inquiry.

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Punishment of officers for breaches of discipline (1979 Act, ss. 94, 100)**75. (1) If—**

- (a) an alleged breach of discipline is dealt with in accordance with the regulations; and
- (b) the officer concerned is found to have committed the breach or admits to the person or persons dealing with the breach that the officer committed the breach,

the appropriate Department Head may decide to—

- (c) impose on the officer one or more of the punishments specified in subsection (2); or
- (d) dismiss the officer from the Public Service or direct that the officer resign, or be allowed to resign, from the Public Service within such period as the direction specifies; or
- (e) in the case of an officer on probation—annul the officer's appointment.

(2) For the purpose of subsection (1) (c), the following punishments are specified:

- (a) a caution;
- (b) a reprimand;
- (c) a fine;
- (d) reduction of salary or demotion to a lower position in the Public Service.

(3) If—

- (a) the appropriate Department Head, in the exercise of powers conferred by this section, decides to direct an officer to resign, or be allowed to resign, from the Public Service within a period specified in the direction; and
- (b) the officer does not resign within that period,

the Department Head may decide to dismiss the officer from the Public Service.

(4) A decision of a Department Head under subsection (1) or (3) may be implemented at any time, but a decision of a Department Head under subsection (1) (d) or (e) or subsection (3) to dismiss an officer from the Public Service or to annul an officer's appointment must not be implemented without the approval of the Governor.

(5) Subsection (4) is subject to Part 3 of the Government and Related Employees Appeal Tribunal Act 1980.

(6) If a Department Head decides to dismiss an officer from the Public Service in accordance with subsection (1) (d) or (3), the decision shall be treated as a decision of the kind referred to in section 23 (1) (f) of the Government and Related Employees Appeal Tribunal Act 1980 even though the decision has not been approved by the Governor.

(7) Any appointment required by a punishment specified in subsection (2) (d) shall be made by the appropriate Department Head.

(8) If a fine is imposed under this section on an officer, the person responsible for paying the officer's salary must, on receiving notice of the imposition of the fine, deduct the amount of the fine from the salary payable to the officer, in such manner as the appropriate Department Head directs.

Punishment where an officer is guilty of a serious offence (1979 Act, s. 95)

76. If an officer—

- (a) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more; or
- (b) is convicted elsewhere than in New South Wales of an offence that, if it were committed in New South Wales, would be an offence so punishable,

the appropriate Department Head may decide to impose on the officer any one or more of the punishments that may be imposed under section 75 (1) as if the officer had, in accordance with that provision, been dealt with for a breach of discipline and were liable to those punishments.

Suspension of officers from duty in certain cases (1979 Act, s. 96)

77. (1) In this section—

“the senior officer”, in relation to an officer charged as referred to in subsection (2), means the senior officer in the branch or section of the Department in which the officer is employed.

(2) If an officer—

- (a) is, in accordance with the regulations, charged with a breach of discipline; or
- (b) is charged with having committed an offence referred to in section 76,

either the appropriate Department Head or the senior officer may suspend the officer from duty, until the charge has been dealt with.

(3) Any salary payable to a person as an officer while the person is suspended from duty under this section shall (if the appropriate Department Head so directs) be withheld.

(4) If such a person—

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(a) is found, as referred to in section 75 (1), to have committed a breach of discipline or admits, as referred to in that provision, to having committed the breach; or

(b) is convicted of an offence referred to in section 76,

then the salary withheld under subsection (3) is forfeited to the Crown, unless—

(c) the appropriate Department Head otherwise directs; or

(d) that salary was due to the person in respect of a period before the suspension was imposed.

(5) Subsections (3) and (4) are subject to the Government and Related Employees Appeal Tribunal Act 1980.

(6) If the appropriate Department Head has suspended an officer from duty under this section, that Department Head may at any time remove the suspension.

(7) If a senior officer has suspended an officer from duty under this section, either the appropriate Department Head or the senior officer may at any time remove the suspension.

(8) The regulations may—

(a) restrict the power of a senior officer to suspend an officer from duty under this section; and

(b) require a senior officer who has suspended an officer from duty under this section to report the suspension to such officer and in such manner as may be prescribed.

Posting of notices to an officer whose address is unknown (1979 Act, s. 97)

78. (1) If—

(a) a charge is pending against an officer; and

(b) the appropriate Department Head does not know the address of the officer,

the Department Head shall post notices, orders or communications relating to the charge to the address of the officer last known to the Department Head.

(2) Compliance with subsection (1) shall be regarded as sufficient service on the officer of any such notices, orders or communications.

(3) If, within the period (if any) specified in any such notice, order or communication, the appropriate Department Head does not receive an answer to an inquiry asking whether the officer admits or denies the truth of the charge against the officer—

(a) the officer shall be taken to have denied the truth of the charge; and

- (b) that Department Head may inquire into and deal with the charge in the officer's absence.

Division 4—Miscellaneous matters relating to conduct of officers

Officer to report bankruptcy etc. (1979 Act, s. 98)

79. (1) If an officer becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the officer's creditors, the officer shall—

- (a) immediately give to the appropriate Department Head notice of the bankruptcy, composition, arrangement or assignment; and
- (b) within such period as the Department Head specifies, provide that Department Head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as that Department Head requires.

(2) If any such officer is the Department Head, subsection (1) applies as if references to the appropriate Department Head were references to the appropriate Minister.

Officer not to engage in other employment without permission (1979 Act, s. 99)

80. (1) An officer shall not—

- (a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any banking, insurance, mining, mercantile or other commercial business, whether it is carried on by a corporation, company, firm or individual; or
- (b) engage in or undertake any such business, whether as principal or agent; or
- (c) engage in or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerative or not, with any corporation, company, firm or individual so engaged,

except with the permission of the appropriate Department Head.

(2) The appropriate Department Head may withdraw any such permission at any time.

(3) Subsections (1) and (2) are subject to any other Act that expressly applies to officers.

(4) If an officer—

- (a) is the holder of an office or position; or
- (b) is engaged in any employment whatever,

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otherwise than in connection with the duties of the officer's position under the Crown, the officer must at once notify the fact to the appropriate Department Head.

(5) If an officer has given a notification to the appropriate Department Head under subsection (4), that Department Head may require the officer to resign the office or position or to abstain from engaging in the employment.

(6) Nothing in this section prevents an officer from accepting and continuing to hold office in any society established under the law relating to friendly societies for the benefit of public servant only.

(7) This section applies (in the case of an officer who is the Department Head) as if references to the appropriate Department Head were references to the appropriate Minister.

Officers retiring or resigning before breach of discipline dealt with

81. (1) If an officer who has been charged with a breach of discipline, or who has been informed that such a charge is about to be laid, retires or resigns from the Public Service, an inquiry may be commenced or continued even though the officer has retired or resigned, and—

- (a) the person shall, for the purposes only of the inquiry, be taken to be an officer suspended from duty without pay; and
- (b) a decision may be made as to the punishment (if any) that would have been imposed under this Part if the officer had not retired or resigned.

(2) Any such decision (other than a fine) does not affect the former officer's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.

(3) A fine imposed under any such decision may be recovered from the former officer as a debt due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former officer by the Crown, or both.

(4) Nothing in this section affects any power under this Act to refuse to accept the resignation of an officer.

(5) In this section, "inquiry" means—

- (a) in relation to a special division officer—a special inquiry; or
- (b) in relation to any other officer—a disciplinary inquiry.

PART 6—SPECIAL INQUIRIES**Minister may direct holding of special inquiry (1979 Act, s. 101)**

82. The Minister may, in the case of any matter relating to a Department (including a matter involving the alleged commission of a breach of discipline by a special division officer), direct such person as the Minister specifies in the direction to conduct a special inquiry into the matter.

Powers of persons conducting special inquiries (1979 Act, s. 102)

83. (1) A person conducting a special inquiry may enter the premises of any Department in connection with the inquiry.

(2) A person conducting a special inquiry has, for the purposes of the inquiry, the functions, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the Royal Commissions Act 1923.

(3) If 2 or more persons are conducting a special inquiry, the person appointed to preside at the inquiry has, for the purposes of the inquiry, the functions conferred on the chairman of a commission by the Royal Commissions Act 1923.

(4) The provisions of the Royal Commissions Act 1923 (except section 13 and Division 2 of Part 2) with necessary modifications apply—

(a) to a special inquiry; and

(b) to any witness or person summoned by or appearing before the inquiry.

Procedure and evidence at a special inquiry (1979 Act, s. 103)

84. (1) If the person conducting a special inquiry agrees, an agent (including a legal practitioner) may represent a person, Department or other body at the inquiry.

(2) The person conducting a special inquiry is not bound by the rules of evidence and may be informed on any matter in issue at the inquiry in such manner as the person considers appropriate.

(3) The person conducting a special inquiry may, in respect of a matter not dealt with by or under this Act, give directions as to the procedure to be followed at or in connection with the inquiry.

Reports of special inquiries (1979 Act, s. 104)

85. (1) The person conducting a special inquiry must—

(a) within such period as the Minister requires, prepare a report on the conduct and findings, and any recommendations, of the inquiry; and

(b) immediately after preparing the report, provide the Minister and the appropriate Minister each with a copy of the report.

(2) The appropriate Minister must cause a copy of the report, together with information as to any action taken or proposed to be taken in relation to the subject of the report, to be laid before each House of Parliament within 30 sitting days of that House after the day on which that Minister was provided with a copy of the report.

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**PART 7—APPLICATION OF PROVISIONS TO DECLARED
AUTHORITIES****Power to amend Schedule 3 relating to declared authorities (1979 Act, s. 124)**

86. (1) The Governor may, by proclamation, amend Schedule 3 by inserting, omitting or amending the name of any authority (whether incorporated or not).

(2) The Governor may, by proclamation, amend Schedule 3 by inserting (in parentheses after the name of an authority), omitting or amending references to any of the applicable provisions referred to in section 87, or the provisions of section 88, which are not to apply to an authority.

(3) The Governor may, by proclamation, omit Schedule 3 and insert instead a Schedule containing the names of authorities, with or without references as referred to in subsection (2).

(4) The name of an authority may be included in Schedule 3 only if the authority is established by or under an Act and it is, or its governing body is, constituted by one or more persons appointed by the Governor or a Minister.

Certain provisions of this Act to apply to declared authorities (1979 Act, s. 125)

87. (1) If an authority is a declared authority, the applicable provisions and the provisions of section 88 apply to the authority, with the exception of such of those provisions as are specified in Schedule 3 after the name of the authority as not applying to the authority.

(2) Whenever the applicable provisions apply to a declared authority—

- (a)** a reference in those provisions to a Department or the Head of a Department shall be read as if it were a reference to the authority; and
- (b)** a reference in those provisions to the staff of a Department shall be read as if it were a reference to the staff of the authority.

(3) For the purposes of this section, the applicable provisions are—

- (a)** Division 2 of Part 3 (Management reviews);
- (b)** Part 6 (Special inquiries);
- (c)** section 45 (Power to enter Department's premises etc.);
- (d)** section 46 (Management assistance and advice); and
- (e)** section 47 (Reports on personnel practices and policies).

(4) The provisions of section 45 apply only for the purposes of the other applicable provisions.

Declared authorities to comply with directions of Industrial Authority on industrial matters

88. (1) The Industrial Authority may, with the approval of the Minister and by notice in writing to a declared authority, require the declared authority—

- (a) to notify the Industrial Authority of such industrial matters affecting the declared authority as may be specified in the notice; and
- (b) to exercise the declared authority's functions in respect of any such industrial matter in such manner as may be specified in the notice.

(2) A notice may specify the manner and the time within which industrial matters must be notified.

(3) A declared authority must comply with a requirement under this section.

(4) This section is subject to section 87 (1).

**PART 8—REMOVAL AND RETIREMENT OF CERTAIN
STATUTORY OFFICE HOLDERS**

Definitions

89. (1) In this Part—

“office holder” means a person appointed to a statutory office, and includes a term appointee;

“term appointee” means a person appointed to a statutory office where the Act concerned provides that the holder of the office holds it for a term specified in the Act, in the instrument of appointment or in another instrument.

(2) For the purposes of this Part, a person is not a term appointee merely because an Act provides that the person ceases to hold office on reaching a particular age.

(3) A reference in this Part to—

- (a) employment in the public sector is a reference to employment as an officer of the Public Service or a Teaching Service or as an officer in the service of a public authority established by or under an Act; and
- (b) engagement in the public sector is a reference to employment in the public sector or to holding a statutory office.

(4) A reference in this Part to the removal from office of a special division officer of the Public Service under section 16 is a reference to such a special division officer ceasing to be an officer of the Public Service under section 16.

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Removal of term appointee from office

90. (1) The Governor may remove a term appointee from office at any time.

(2) This section does not prevent a term appointee from being removed from office apart from this Act.

(3) This section applies whether the term appointee holds office on a full-time or part-time basis:

(4) This section does not apply to a person in the person's capacity as—

- (a) a special division officer of the Public Service; or
- (b) the holder of an office under an Act that provides that the holder may or must be removed from office following an address, declaration, resolution or other involvement of either or both of the Houses of Parliament; or
- (c) the Crown Advocate; or
- (d) an Assistant Commissioner for the Independent Commission Against Corruption or any other officer of the Commission.

Re-appointment to public sector following removal of term appointee

91. (1) This section applies to—

- (a) a person who is removed from an office under section 90 and who has not reached the age of 60 years; or
- (b) a special division officer of the Public Service (being a term officer) who is removed from office under section 16 and who has not reached the age of 60 years.

(2) A person to whom this section applies is entitled to engagement in the public sector, if—

- (a) for a continuous period ending immediately before appointment to the office the person was at all times engaged in the public sector on a full-time basis; and
- (b) for at least some part of that engagement the person was an employee in the public sector.

(3) The engagement to which the person is entitled under this section is to be an engagement—

- (a) at a salary not lower than the current salary for the previous engagement of the person as such an employee; and
- (b) with duties appropriate to that salary.

(4) The person is not entitled to any compensation for the removal from office or to any remuneration in respect of the office for any period afterwards.

Compensation for office holder following removal or retirement

92. (1) This section applies to—

- (a) a person who (being a term appointee) is removed from an office under section 90 and who is not entitled to be engaged in the public sector under section 91; or
- (b) a special division officer of the Public Service who (being a term officer) is removed from office under section 16 and who is not entitled to be engaged in the public sector under section 91; or
- (c) a person who (being an office holder) is, after reaching the age of 60 years and before reaching the age of 65 years, retired from office by the Governor under section 19 or under any other Act,

but does not apply to a person who held the office concerned on a part-time basis.

(2) A person to whom this section applies is entitled to such compensation (if any) for loss of remuneration as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The maximum compensation payable is an amount equal to the person's gross remuneration for—

- (a) the period of one year; or
- (b) if the person was appointed for a term—the period starting from the person's removal or retirement from office and ending when the person's term of office would have expired; or
- (c) if the person would have ceased to hold office on account of reaching a particular age—the period starting from the person's removal or retirement from office and ending when the person would have reached that age,

at the rate at which it was payable immediately before the person's removal or retirement from office.

(4) If more than one such period is applicable, the maximum compensation is to be calculated by reference to the shorter or shortest period.

(5) The person is not entitled to any other compensation for the removal or retirement from office or to any other remuneration in respect of the office for any period afterwards.

(6) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation for loss of remuneration relates.

(7) The person may not be engaged in the public sector during the period so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

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Election by term officer to take compensation

93. A person to whom section 91 applies may, before being engaged in the public sector under that section, elect in writing to take compensation referred to in section 92, and on the election taking effect the person ceases to be entitled to engagement in the public sector under section 91.

Operation of this Part

94. (1) This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.

(2) This Part applies to a person appointed to a statutory office even though the Act concerned excludes the application of this Act, unless it expressly excludes the application of this Part.

(3) This Part applies to persons holding office at the commencement of this Part, as well as to persons appointed to an office afterwards.

(4) Disentitlement under this Part to salary of an office does not apply as regards a subsequent re-appointment to the office.

(5) This Part does not apply to a person in the person's capacity as—

- (a) the Governor, the Lieutenant-Governor or other officer administering the Government; or
- (b) a member of the Executive Council, a Minister of the Crown, a member of either House of Parliament or the holder of any other political office; or
- (c) the holder of a judicial office; or
- (d) the Parliamentary Remuneration Tribunal.

PART 9—SUPPLEMENTARY PROVISIONS**Certain other Acts not to be affected (1979 Act, ss. 8, 126)**

95. The Superannuation Act 1916, the Industrial Arbitration Act 1940, the State Public Service Superannuation Act 1985 and the State Authorities Superannuation Act 1987 are not affected by anything in this Act.

Minister's powers to control staff and work of Department not affected (1979 Act, s. 128)

96. The ordinary and necessary departmental authority of a Minister with respect to the direction and control of staff and work is not limited by anything in this Act.

Construction of certain references (1979 Act s. 129)

97. (1) In any other Act, in any instrument made under any Act or in any other instrument of any kind (enacted, made or executed whether before or after the commencement of this section), except in so far as the context or subject-matter otherwise indicates or requires—

- (a) a reference to the "Public Service" or the "public service" shall be read as a reference to the Public Service within the meaning of this Act; and
- (b) a reference to a "Public Servant" or a "public servant" shall be read as a reference to an officer or temporary employee within the meaning of this Act; and
- (c) a reference to a Department Head shall be read as including a reference to a person who has the functions of a Department Head.

(2) A reference in section 49 of the Constitution Act 1902 to a Department shall be read as including a reference to an Administrative Office.

(3) Subsection (1) does not apply to particular references specified for the purposes of this subsection by the Governor by order published in the Gazette.

Evidence as to Public Service Notices (1979 Act, s. 132)

98. A document purporting to be an issue of the Public Service Notices—

- (a) is admissible in evidence in any proceedings, including proceedings before the Tribunal; and
- (b) shall, until the contrary is proved, be presumed to be a copy of an issue of the Public Service Notices.

Deductions for rent etc. in certain cases (1979 Act, s. 130)

99. (1) Except as provided in subsection (3), if any officer or temporary employee is allowed to use, for residential purposes, any premises belonging to the Government, the Industrial Authority may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the officer or employee.

(2) When giving a direction under subsection (1), the Industrial Authority shall either fix the amount of rent to be deducted or specify a person by whom the amount of rent to be deducted is to be fixed.

(3) If an officer or temporary employee is allowed to use, for residential purposes, any premises or any land vested in or managed by the Public Servant Housing Authority of New South Wales or the Teacher Housing Authority of New South Wales, an amount fixed by the Authority concerned in respect of rent shall be deducted from the salary of that officer or employee and paid to the Authority concerned.

(4) In this section, "rent" includes payment for board and lodging.

Extended leave for officers etc. (1979 Act, ss. 120–122)

100. Schedule 5 has effect.

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Attachment of wages or salary of officers etc. (1979 Act, s. 131)

101. Schedule 6 has effect.

Regulations (1979 Act, s. 133)

102. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) providing for the medical examination and standards of medical fitness for the appointment of persons to positions in the Public Service;
- (b) prescribing the educational qualifications for appointments to positions in the Public Service;
- (c) providing for the conduct of examinations in connection with any such appointments;
- (d) prescribing the procedure to be adopted for selecting an appointee from among candidates for a vacant position (other than a special division position), but not so as to limit the power of the appropriate Department Head to make a recommendation in relation to the filling of the vacancy;
- (e) determining the eligibility of persons for appointment as temporary employees;
- (f) providing for the transfer of staff between Departments;
- (g) providing for the hours of attendance of staff;
- (h) prescribing the leave which may be granted to staff;
- (i) providing for the payment of travelling and subsistence allowances for staff (other than special division officers), allowances for the increased cost of living in remote areas, and other allowances for staff;
- (j) prescribing the procedures to be adopted consequent on the appointment of a person to a position;
- (k) providing for the exercise of the functions of suspended, sick or absent staff by other staff, and the exercise by staff of the functions attaching to vacant positions;
- (l) providing for the acquisition of stores, equipment, materials and services for the Public Service;
- (m) providing for entry to positions in the Public Service in special cases.

(3) A regulation may—

- (a) create an offence for a breach of the regulations punishable by; or

(b) prescribe for a minor offence against discipline, a penalty not exceeding 1 penalty unit.

(4) The regulations are not capable of altering or affecting any duty that is required to be performed by or under any Act.

(5) The Governor may determine and implement methods for acquiring stores, equipment, materials and services for the Public Service, whether or not by means of public tender.

(6) The power conferred by subsection (5) is not affected by subsection (2) or anything in the regulations.

Amendment of Schedule 1 with respect to Departments (1979 Act, s. 5)

103. (1) Whenever a Department is established or abolished, or its name is changed, the Governor may, by proclamation, amend column 1 of Schedule 1 by inserting, omitting or amending the name of the Department accordingly.

(2) The Governor may, by proclamation, amend column 2 of Schedule 1 by inserting opposite the name of a Department the title or other description of a position in the Department, or by omitting or amending that title or other description.

(3) The Governor may, by proclamation, omit Schedule 1 and insert instead a Schedule containing in column 1 the names of Departments and containing in column 2 the titles or other descriptions of positions in those Departments.

(4) In this section, a reference to a Department does not include a reference to an Administrative Office.

Amendment of Schedule 2 with respect to Administrative Offices (1979 Act, s. 6)

104. (1) The Governor may, by proclamation, amend column 1 of Schedule 2 by inserting, omitting or amending the title or other description of a body, organisation or group.

(2) The Governor may, by proclamation, amend column 2 of Schedule 2 by inserting the title or other description of an office or position, or by omitting or amending that title or other description.

(3) The Governor may, by proclamation, omit Schedule 2 and insert instead a Schedule containing in column 1 the titles or other descriptions of bodies, organisations or groups and containing in column 2 the titles or other descriptions of offices or positions.

Repeal

105. The Public Service Act 1979 is repealed.

*Public Sector Management 1988***Savings, transitional and other provisions****106.** Schedule 7 has effect.**SCHEDULE 1—DEPARTMENTS**

(Secs. 3, 9, 103)

Column 1	Column 2
Department	Department Head
Department of Administrative Services	Secretary of the Department.
Department of Agriculture and Fisheries	Director-General of the Department.
Ministry for the Arts	Secretary of the Ministry.
Attorney General's Department	Secretary of the Department.
Business and Consumer Affairs	Managing Director of the Department.
Cabinet Office	Director of the Office.
Chief Secretary's Department	Secretary of the Department.
Department of Education	Director-General of the Department.
Ministry of Education and Youth Affairs	Secretary of the Ministry.
Department of Energy	Director of the Department.
Department of Family and Community Services ..	Director-General of the Department.
Department of Health	Secretary of the Department.
Department of Housing	Director of Housing.
Department of Industrial Relations and Employment	Secretary of the Department.
Department of Lands	Secretary of the Department.
Department of Local Government	Secretary of the Department.
Department of Mineral Resources	Secretary of the Department.
New South Wales Superannuation Office	Secretary of the Office.
Premier's Office	Director of the Office.
Public Works Department	Director of Public Works.
Department of Sport, Recreation and Racing	Director of the Department.
Department of State Development	Director-General of the Department.
Department of Technical and Further Education ..	Director-General of the Department.
Ministry of Transport	Secretary of the Ministry.
The Treasury	Secretary of the Treasury.
Department of Water Resources	Director of the Department.

*Public Sector Management 1988***SCHEDULE 2—ADMINISTRATIVE OFFICES**

(Secs. 3, 10, 104)

Column 1	Column 2
Body, organisation or group	Person exercising functions of Department Head
Auditor-General's Office	Auditor-General.
Bush Fire Council	Chairman of the Council.
Corrective Services Commission	Chairman of the Commission.
New South Wales Dairy Corporation	General Manager of the Corporation.
Darling Harbour Authority	General Manager of the Authority.
Office of the Minister for the Environment	Director of the Office.
Ethnic Affairs Commission	Chairman of the Commission.
Forestry Commission	Commissioner constituting the Forestry Commission.
Government Printing Office	Government Printer.
Government Supply Office	Director of the Office.
Legal Aid Commission	Director of the Commission.
National Parks and Wildlife Service	Director of National Parks and Wildlife.
New South Wales Meat Industry Authority	Chairman of the Authority.
Ombudsman's Office	Ombudsman.
Department of Planning	Director of Environment and Planning.
Police Department	Commissioner of Police.
Public Trust Office	Public Trustee.
Soil Conservation Service	Commissioner of the Service.
State Compensation Board	Chief Executive Officer of the Board.
State Drug Crime Commission	Chairperson of the Commission.
State Electoral Office	Electoral Commissioner.
State Emergency Services and Civil Defence	Director of State Emergency Services and Civil Defence.
State Lotteries Office	Director of the Office.
State Pollution Control Commission	Director of the Commission.
Tourism Commission	General Manager of the Commission.
Valuer-General's Department	Valuer-General.

*Public Sector Management 1988***SCHEDULE 3—DECLARED AUTHORITIES**

(Secs. 3, 86)

Board of Fire Commissioners of New South Wales (section 7 not to apply).
 Broken Hill Water Board (section 7 not to apply).
 Cobar Water Board (section 7 not to apply).
 The Commissioner for Main Roads (section 7 not to apply).
 The Commissioner for Motor Transport (section 7 not to apply).
 The Electricity Commission of New South Wales (section 7 not to apply).
 Fish Marketing Authority (section 7 not to apply).
 Grain Handling Authority of New South Wales (section 7 not to apply).
 Greyhound Racing Control Board (section 7 not to apply).
 Harness Racing Authority of New South Wales (section 7 not to apply).
 Homebush Abattoir Corporation (section 7 not to apply).
 Hunter District Water Board (section 7 not to apply).
 The Maritime Services Board of New South Wales (section 7 not to apply).
 Metropolitan Waste Disposal Authority (section 7 not to apply).
 State Authorities Superannuation Board (section 7 not to apply).
 State Rail Authority of New South Wales (section 7 not to apply).
 Sydney Cove Redevelopment Authority (section 7 not to apply).
 Sydney Market Authority (section 7 not to apply).
 Totalizator Agency Board (section 7 not to apply).
 Traffic Authority of New South Wales (section 7 not to apply).
 Urban Transit Authority of New South Wales (section 7 not to apply).
 Water Board (section 7 not to apply).
 Zoological Parks Board of New South Wales (section 7 not to apply).

**SCHEDULE 4—SPECIAL PROVISIONS RELATING TO SPECIAL DIVISION
TERM OFFICERS**

(Sec. 15)

Preservation of rights

1. (1) This clause applies where a term officer was, immediately before being appointed as a term officer—

- (a) an officer of a Teaching Service; or
- (b) a contributor to a superannuation scheme; or
- (c) an officer employed by a proclaimed statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of appointment, a term officer—

- (a) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person; and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a term officer; and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a term officer.

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SCHEDULE 4—SPECIAL PROVISIONS RELATING TO SPECIAL DIVISION
TERM OFFICERS—*continued*

(3) Service as a term officer shall be regarded as service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred.

(4) A term officer shall be regarded as an officer or employee, and the Crown shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If a term officer would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she is not so entitled on becoming (whether upon appointment as a term officer or at any later time while holding office as a term officer) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Crown in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to a term officer (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A term officer is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Term officer entitled to re-appointment to former employment in certain cases

2. (1) A person who—

- (a) ceases to be a term officer because of the expiration of the period for which the person was appointed or because of resignation; and
- (b) was, immediately before being appointed as a term officer—
 - (i) an officer of a Teaching Service; or
 - (ii) an officer or employee of a proclaimed statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Teaching Service or the service of that proclaimed statutory body—

- (d) not lower in salary than the current salary for the position which the person held immediately before being appointed as a term officer; and
- (e) with duties appropriate to that salary.

*Public Sector Management 1988***SCHEDULE 4—SPECIAL PROVISIONS RELATING TO SPECIAL
DIVISION TERM OFFICERS—*continued***

(2) Where subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1)(b); and

(b) is after that appointment appointed as a term officer,

the person has, in the event of ceasing to be a term officer, such rights (if any) to appointment as such an officer or employee as are specified in the instrument of appointment as a term officer or as are agreed on by the person and by or on behalf of the Government.

(3) In this clause—

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

**SCHEDULE 5—EXTENDED LEAVE FOR OFFICERS ETC. OF PUBLIC
SERVICE**

(Sec. 100)

Officer to be entitled to extended leave after a certain period of service (1979 Act, s. 120)

1. (1) Subject to this Schedule, an officer is entitled—

(a) after service for 10 years, to leave for 2 months on full pay or 4 months on half pay; and

(b) after service in excess of 10 years, to—

(i) leave as provided by paragraph (a); and

(ii) in addition, an amount of leave proportionate to the officer's length of service after 10 years, calculated on the basis of 5 months on full pay, or 10 months on half pay, for 10 years served after service for 10 years.

(2) For the purpose of calculating the entitlement of a person to extended leave under this clause at any time—

(a) service referred to in this clause includes service before the commencement of this Schedule; and

(b) there must be deducted from the amount of extended leave to which, but for this paragraph, that person would be entitled—

(i) any extended leave, or leave in the nature of extended leave; and

(ii) the equivalent, in extended leave, of any benefit instead of extended leave or leave in the nature of extended leave,

taken or received by that person before that time, including any such leave taken, or benefit received, by that person in accordance with the Public Service (Amendment) Act 1919 as in force at any time; and

(c) the provisions of the Transferred Officers Extended Leave Act 1961 have effect.

(3) Nothing in subclause (2) shall be regarded as authorising, in respect of the same period of leave taken or the same benefit received, a deduction under both subclause (2) (b) and section 3 (7) of the Transferred Officers Extended Leave Act 1961.

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SCHEDULE 5—EXTENDED LEAVE FOR OFFICERS ETC. OF PUBLIC
SERVICE—*continued*

(4) If the services of an officer with at least 5 years' service as an adult and less than 10 years' service are terminated—

- (a) by the Crown, the Governor or the appropriate Department Head for any reason other than the officer's serious and intentional misconduct; or
- (b) by the officer on account of illness, incapacity or domestic or other pressing necessity,

the officer is entitled—

- (c) for 5 years' service, to 1 month's leave on full pay; and
- (d) for service after 5 years, to a proportionate amount of leave on full pay calculated on the basis of 3 months' leave for 15 years' service (that service to include service as an adult and otherwise than as an adult).

(5) For the purposes of subclause (4), "service as an adult", in the case of an officer employed to do any work for which the remuneration—

- (a) has been fixed by an award of the Commonwealth—
 - (i) made under the Conciliation and Arbitration Act 1904 of the Commonwealth; or
 - (ii) made under the Industrial Arbitration Act 1940; or
- (b) has been fixed by an industrial agreement made in accordance with or registered under either of those Acts or an agreement or determination made in accordance with this Act,

means the period of service during which the remuneration applicable to the officer was at a rate not lower than the lowest rate fixed under the award, industrial agreement, agreement or determination for an adult male or adult female in the same trade, classification, calling, group or grade as the officer.

(6) For the purposes of subclause (1), "service" includes—

- (a) service under the Teaching Service Act 1970; and
- (b) any period of leave without pay taken before the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963; and
- (c) in the case of an officer who has completed at least 10 years' service—any period of leave without pay, not exceeding 6 months, taken after that commencement.

(7) In subclause (6) (c), for the purpose of determining whether or not an officer has completed at least 10 years' service, the officer's period of service shall be taken—

- (a) to include any period of leave without pay taken before the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963; and
- (b) to exclude any period of leave without pay taken after that commencement.

(8) For the purposes of subclause (4), "service" does not include any period of leave without pay whether taken before or after the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963.

*Public Sector Management 1988***SCHEDULE 5—EXTENDED LEAVE FOR OFFICERS ETC. OF PUBLIC SERVICE—*continued***

Certain officers to be entitled to be paid a gratuity instead of extended leave (1979 Act, s. 121)

2. (1) An officer who has acquired a right to extended leave with pay under clause 1 is entitled, immediately on the termination of the officer's services, to be paid instead of that leave the money value of the extended leave as a gratuity in addition to any gratuity to which the officer may be otherwise entitled.

(2) Any pension to which any such officer is entitled under the Superannuation Act 1916 commences from and including the date on which the officer's extended leave, if taken, would have commenced.

Payment to be made where an officer entitled to extended leave has died (1979 Act, s. 122)

3. (1) If an officer has acquired a right under clause 1 to extended leave with pay and dies before starting it, or after starting it dies before completing it—

- (a) the widow or widower of the officer; or
- (b) if there is no such widow or widower, the children of the officer; or
- (c) if there is no such widow, widower or children, the person who, in the opinion of the appropriate Department Head, was, at the time of the officer's death, a dependent relative of the officer,

is entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary that the officer received at the time of his or her death, less any amount paid to the officer in respect of the leave not taken, or not completed.

(2) If an officer with at least 5 years' service as an adult and less than 10 years' service as referred to in clause 1 (4) dies—

- (a) the widow or widower of the officer; or
- (b) if there is no such widow or widower, the children of the officer; or
- (c) if there is no such widow, widower or children, the person who, in the opinion of the appropriate Department Head, was, at the time of the death of the officer, a dependent relative of the officer,

is entitled to receive the money value of the leave which would have accrued to the officer had his or her services terminated as referred to in clause 1 (4), computed at the rate of salary that the officer was receiving at the time of his or her death.

(3) If there is a guardian of any children entitled under subclause (1) or (2), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.

(4) If there is no person entitled under subclause (1) or (2) to receive the money value of any leave not taken or not completed by an officer or which would have accrued to an officer, payment in respect of that leave must be made to the officer's personal representatives.

(5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.

(6) If payment of the money value of leave has been made under this Act, the Crown ceases to be liable for payment of any amount in respect of that leave.

**SCHEDULE 5—EXTENDED LEAVE FOR OFFICERS ETC. OF PUBLIC
SERVICE—*continued***

Extended leave for temporary employees

4. (1) In this Schedule, a reference to an officer includes a reference to a temporary employee.

(2) If the period of leave to which a temporary employee is entitled under this Schedule exceeds the period for which the temporary employee is employed under this Act, the balance of that period of leave may be granted during subsequent periods of employment in the Public Service if each subsequent period of employment commences on the termination of a previous period of employment in the Public Service.

**SCHEDULE 6—ATTACHMENT OF WAGES OR SALARY OF OFFICERS ETC.
OF PUBLIC SERVICE**

(Sec. 101)

Definition etc. (1979 Act, s. 131 (9),(13))

1. (1) In this Schedule—

“judgment” includes a judgment against joint defendants.

(2) This Schedule does not apply in relation to an officer or temporary employee who is an undischarged bankrupt.

Salary or wages of officers and temporary employees may be attached (1979 Act, s. 131 (1)–(6))

2. (1) If judgment has been entered in a court against an officer or temporary employee for the payment of a sum of money, the person in whose favour the judgment is entered may serve on the Head of the Department to which the officer or temporary employee belongs—

- (a) a copy of the judgment certified under the hand of the registrar or other proper officer of the court in which the judgment is entered; and
- (b) a statutory declaration stating that the judgment has not been satisfied by the judgment debtor, and setting out the amount due by the judgment debtor under the judgment.

(2) As soon as practicable after the service on a Department Head of a copy of a judgment and a statutory declaration in accordance with this section, the Department Head must—

- (a) notify the judgment debtor in writing of the service of the copy of the judgment and statutory declaration; and
- (b) require the judgment debtor—
 - (i) to state in writing within a time to be specified by the Department Head whether the judgment has been satisfied; and
 - (ii) if so, to provide evidence that the judgment has been satisfied; and
 - (iii) if the judgment has not been satisfied, to state the amount then due under the judgment.

(3) If the officer or temporary employee fails to prove to the satisfaction of the Department Head that the judgment has been satisfied, the Department Head may—

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SCHEDULE 6—ATTACHMENT OF WAGES OR SALARY OF OFFICERS ETC.
OF PUBLIC SERVICE—*continued*

(a) from time to time cause to be deducted from any money due to the officer or temporary employee such sums as are, in the Department Head's opinion, necessary to enable the judgment to be satisfied; and

(b) apply those sums in the manner provided by clause 4.

(4) A deduction must not be made under this clause if it would reduce the amount to be received by the officer or temporary employee to less than a sum per week equivalent to the amount ascertained in accordance with subclause (5).

(5) The amount which, by virtue of subclause (4), is to be ascertained in accordance with this subclause must be ascertained by—

(a) in the case of a male officer or temporary employee, deducting \$8 from the basic wage for adult males; and

(b) in the case of a female officer or temporary employee, deducting \$8 from the basic wage for adult females,

in force within the meaning of Part 5 of the Industrial Arbitration Act 1940 immediately before the deduction under subclause (3) is made.

(6) If copies of more than one judgment and statutory declaration are served on the Department Head in respect of a single judgment debtor, the judgment must be dealt with under this clause in the order in which copies of the judgments are served on the Department Head.

(7) Any deductions made under subclause (3) from money due to an officer or temporary employee shall, as between the Crown and the officer or employee, be regarded as a payment by the Crown to the officer or employee.

Offence for a person to fail to notify certain payments (1979 Act, s. 131 (7))

3. If a person to whom a payment has been made in accordance with clause 2 fails to notify the Department Head as soon as the judgment debt in respect of which the payment was made is satisfied, or is deemed to be satisfied, the person is liable on conviction by a Local Court to a penalty not exceeding 1 penalty unit.

How deductions under clause 2 are to be disposed of (1979 Act, s. 131 (8), (10)–(12))

4. (1) If any deduction made in accordance with clause 2 from money due to a judgment debtor exceeds the amount due under the judgment against the judgment debtor—

(a) the Department Head concerned must repay the amount of the excess; and

(b) in default of payment, the judgment debtor may recover that amount from the Crown in any court of competent jurisdiction.

(2) A Department Head who has deducted sums in accordance with clause 2—

(a) must retain out of those sums an amount equal to the prescribed percentage of those sums and pay that amount to the Treasurer for crediting to the Consolidated Fund; and

(b) must pay the balance of those sums to the judgment creditor concerned.

*Public Sector Management 1988***SCHEDULE 6—ATTACHMENT OF WAGES OR SALARY OF OFFICERS ETC.
OF PUBLIC SERVICE—*continued***

- (3) Whenever a payment is made to a judgment creditor under subclause (2), the Department Head must forward to the judgment creditor a statement showing—
- (a) the sums deducted under clause 2 in respect of the judgment from money due to the officer or temporary employee concerned; and
 - (b) the amount retained by the Department Head under subclause (2) out of those sums; and
 - (c) the balance of those sums paid to the judgment creditor under subclause (2).
- (4) On payment being made to the judgment creditor under subclause (2)—
- (a) the judgment creditor must credit the officer or temporary employee concerned with the sums referred to in subclause (3) (a), as shown in the statement forwarded to the judgment creditor; and
 - (b) the judgment in respect of which the payment was made shall for all purposes be taken to be satisfied to the extent of those sums, as shown in that statement.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 106)

PART 1—GENERAL**Definitions****1. In this Schedule—**

“former Act” means the Public Service Act 1979;

“Public Service Board” means the Public Service Board of New South Wales constituted under the former Act.

Savings and transitional regulations

2. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:

This Act;

Miscellaneous Acts (Public Sector Management) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***PART 2—PROVISIONS CONSEQUENT ON ENACTMENT OF THIS ACT****Abolition of Public Service Board**

3. The Public Service Board is abolished.

Members of Public Service Board

4. (1) A person who, immediately before the commencement of this clause, held office as a member of the Public Service Board—

- (a) ceases to hold office as such on that commencement; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

- (2) Nothing in this Act affects any arrangement made by or on behalf of the Government for the appointment of any such person to a position in the service of the Government or for the payment of any compensation.

Transfer of assets, liabilities etc. of Public Service Board

5. Any assets, rights, liabilities or obligations of the Public Service Board shall be assets, rights, liabilities or obligations of the Crown.

Superseded references

6. In any other Act, or in any instrument made under any Act or in any other instrument of any kind—

- (a) a reference to the Public Service Board (or the Chairman or a member of that Board) shall be read as a reference to—
 - (i) subject to subparagraph (ii)—the Public Employment Industrial Relations Authority; or
 - (ii) in the case of any particular reference—such person or body as is prescribed by the regulations in respect of that reference; and
- (b) a reference to the Public Service Act 1902 or the Public Service Act 1979 shall be read as a reference to this Act.

Existing public service staff

7. (1) Any officers and temporary employees employed under the former Act shall be taken to be officers and temporary employees respectively employed under this Act.

- (2) If any procedures have been commenced before the commencement of this clause in relation to the filling of a vacancy in the Public Service or the appointment of a person to any position in the Public Service, the procedures must be completed in accordance with this Act (unless the regulations otherwise provide).

Divisions

8. (1) For the purposes of any Act, statutory instrument, award, industrial agreement or other instrument, a reference to a Division of the Public Service is a reference to such class of officers as the regulations prescribe.

- (2) Until the regulations otherwise provide, the officers included in any such Division shall be determined by the Industrial Authority.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Staff positions

9. The staff establishments of the Departments and Administrative Offices determined by the Public Service Board under section 38 of the former Act and in force immediately before the commencement of this clause shall, on that commencement, be taken to have been determined by the appropriate Department Heads under section 8 of this Act as the staff positions of those Departments and Administrative Offices.

Administrative units

10. A list and declaration in force under section 59 of the former Act immediately before the commencement of this clause shall be taken to be in force under section 23 of this Act.

Public Service Notices

11. A reference in this Act to Public Service Notices includes a reference to Public Service Notices issued under the former Act.

Agreements

12. Any agreement between the Public Service Board and an association or organisation (under section 83 of the former Act or under any other law relating to industrial matters) and in force immediately before the commencement of this clause shall be taken to be, after that commencement, an agreement between the Industrial Authority and the association or organisation made under section 64 of this Act or under that other law.

Determinations of remuneration

13. Any determination by the Public Service Board of remuneration of officers and temporary employees under section 82 of the former Act, and in force immediately before the commencement of this clause, shall be taken to be, after that commencement, a determination made by the Industrial Authority under section 63 of this Act.

Discipline and conduct

14. (1) Part 5 of this Act applies to and in respect of acts and omissions committed or alleged to have been committed before as well as after the commencement of that Part.

(2) Any disciplinary proceedings pending under the former Act immediately before the relevant commencement shall be taken to be pending under this Act and may continue to be heard and disposed of by the persons delegated under the former Act to do so, unless replaced by such persons as the appropriate Department Head may delegate under this Act to do so.

(3) Any suspension in force under section 96 of the former Act immediately before the commencement of this clause shall be taken to have been imposed under section 77 of this Act.

Special inquiries

15. A special inquiry pending under section 101 of the former Act immediately before the commencement of this clause shall be taken to be pending under this Act and may continue to be conducted by the persons delegated under the former Act to conduct the inquiry, unless replaced by such persons as the Minister may delegate under this Act to conduct the inquiry.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Appeals to Public Service Board**

16. (1) Any appeal pending under section 116 of the former Act immediately before the commencement of this clause may continue to be heard by the persons delegated under the former Act to hear the appeal, unless replaced by persons nominated by the Industrial Authority.

(2) The Industrial Authority may decide any such appeal and, for that purpose, exercise the functions of the Public Service Board under the former Act.

Appeals to Government and Related Employees Appeal Tribunal etc.

17. (1) Notwithstanding the amendment made to section 21 (1) (g) of the Government and Related Employees Appeal Tribunal Act 1980 by the Miscellaneous Acts (Public Sector Management) Amendment Act 1988, that paragraph, as in force immediately before the commencement of that amendment continues to apply to decisions against which an appeal has been lodged under section 20 of that Act before the commencement of that amendment.

(2) An appeal to the Tribunal against a decision of the Public Service Board which is pending on the commencement of this clause, shall, for the purposes of the appeal, be taken to be a decision of the appropriate Department Head.

(3) A person nominated by the Public Service Board in accordance with Schedule 2 to the Government and Related Employees Appeal Tribunal Act 1980 as an employer's representative does not cease to be so nominated because of this Act or the Miscellaneous Acts (Public Sector Management) Amendment Act 1988, but may be removed as an employer's representative by the Industrial Authority.

Industrial Arbitration Act 1940

18. (1) A person who is a member of a committee under the Industrial Arbitration Act 1940 immediately before the commencement of this clause and who was nominated by the Public Service Board as an employer's representative does not cease to be so nominated because of this Act or the Miscellaneous Acts (Public Sector Management) Amendment Act 1988.

(2) The Industrial Authority may, in accordance with the Industrial Arbitration Act 1940, withdraw the nomination of any such person.

Judgments

19. Anything done or omitted under section 131 of the former Act shall be taken to have been done or omitted under Schedule 6 to this Act.

Deductions for residence

20. Any directions made under section 130 (1) of the former Act and in force immediately before the commencement of this Act shall be taken to be directions under section 99 (1) and (2).

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Repeal of regulations under former Act**

21. (1) The Public Service (General) Regulation 1984 is repealed.
 - (2) The Public Service (Stores and Services) Regulation 1984 is repealed.
 - (3) The Public Service (Savings and Transitional Provisions) Regulation 1980 is repealed.
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