

Transferred Officers Extended Leave Act 1961 No 13

[1961-13]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Teaching Services Amendment Act 2004 No 114](#) (not commenced)

Authorisation

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Transferred Officers Extended Leave Act 1961 No 13



New South Wales

An Act to make provision with respect to the entitlement to extended leave with pay of certain persons who transfer to the New South Wales public service or to the service of certain New South Wales authorities; to amend the *Public Service (Amendment) Act 1919* and certain other Acts in certain respects; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Transferred Officers Extended Leave Act 1961*.

2 Definitions

(1) In this Act, unless the context or subject-matter otherwise indicates or requires:

Commonwealth Reconstruction Training Scheme means the Commonwealth Reconstruction Training Scheme established pursuant to the *Re-establishment and Employment Act 1945*, as amended by subsequent Acts, of the Parliament of the Commonwealth of Australia.

Extended leave means extended or long service leave, with pay, whether accruing under or by virtue of any Act or otherwise and includes any leave in the nature of extended leave by whatever name called.

Governmental authority of the Commonwealth or another State means any department, commission, board, authority or instrumentality declared by the Governor, pursuant to subsection (2), to be a governmental authority of the Commonwealth or another State for the purposes of this Act.

Governmental service means:

- (a) service in the public service of the State or the public service of the Commonwealth or another State, or
- (b) service with a State authority or with a governmental authority of the Commonwealth or another State, or service with the armed forces of the Commonwealth,

whether or not, in the case of a State authority or a governmental authority of the Commonwealth or another State, it had been declared as such at the time of the service with it.

Public service of the Commonwealth or another State means public service of the Commonwealth of Australia, of any Australian State other than New South Wales, or of any Territory of the Commonwealth of Australia but does not include service with a local authority.

Public service of the State means service under the provisions of the [Public Service Act 1902](#), as amended by subsequent Acts, and includes service in any department to which the provisions of that Act, as so amended, apply.

Regulations means regulations under this Act.

Service with the armed forces of the Commonwealth means full time service with the armed forces of the Commonwealth of Australia including full time service with the Commonwealth Military Forces, the Australian Regular Army, the Regular Army Special Reserve, the Volunteer Defence Corps and National Service (Training).

State authority means:

- (a) any department, commission, board, authority or instrumentality declared by the Governor, pursuant to subsection (2), to be a State authority for the purposes of this Act, or
- (b) any public sector service declared by clause 3 of Schedule 5A to the [Public Sector Management Act 1988](#) to be a State authority for the purposes of this Act.

State employer means:

- (a) an employer in the public service of the State, or
 - (b) a State authority, or
 - (c) in relation to persons employed in the Education Teaching Service under the [Education Commission Act 1980](#)—the Director-General of Education.
 - (d) (Repealed)
- (2) The Governor may by notice published in the Gazette:
- (a) declare to be a governmental authority of the Commonwealth or another State for the purposes of this Act any department, commission, board, authority or instrumentality created:
 - (i) by or under any Act of the Parliament of the Commonwealth of Australia or of any Australian State other than New South Wales,

- (ii) by or under any Ordinance of any Territory of the Commonwealth of Australia, or
- (iii) jointly by or under any Acts of the Parliaments of any two or more Australian States, or of the Commonwealth of Australia and one or more Australian States, and

Editorial note—

For list of governmental authorities of the Commonwealth or another State, see the Historical notes at the end of this Act.

- (b) declare to be a State authority for the purposes of this Act any department, commission, board, authority or instrumentality created by or under any Act.

Editorial note—

For declarations of State authorities, see the Historical notes at the end of this Act. See also section 94 of the *Public Sector Employment and Management Act 2002*.

Any department, commission, board, authority or instrumentality so created may, pursuant to this section, be declared to be a governmental authority of the Commonwealth or another State or a State authority, as the case may be, notwithstanding that it has ceased to exist at the time when the declaration is made, and whether it ceased to exist before or after the commencement of this Act.

3 Method of reckoning service of certain employees in the public service of the State and of certain State authorities

- (1) Any person who is employed at, or at any time after, the commencement of this Act in the service of a State employer (in this section referred to as the **current employer**) shall be entitled, for the purpose of calculating the person's entitlement to extended leave as an employee of the current employer, to have such of the prescribed periods, referred to in subsection (2), (3), (4), (4A) or (5), as are applicable to the person reckoned as service with the current employer.
- (2) Where:
 - (a) a person referred to in subsection (1):
 - (i) has had, at any time before commencing service with the current employer, any continuous governmental service that was continuous with any subsequent service that the person had with a State employer, other than the current employer,
 - (ii) was under the age of sixty years when commencing such subsequent service,
 - (b) the person's service with that State employer was:
 - (i) a period of continuous service that was continuous with the service with the current employer, or

(ii) one of two or more periods of continuous service:

(a) each of which was continuous with another of them and was with a State employer, and

(b) one of which was continuous with the service with the current employer, and

(c) the person's service with the current employer is continuous service,

then the period of continuous governmental service, referred to in subparagraph (i) of paragraph (a), and the period, or two or more periods, of continuous service, referred to in subparagraph (i) or (ii) of paragraph (b), shall be prescribed periods for the purpose of subsection (1).

(3) Where a person referred to in subsection (1):

(a) has had, at any time before commencing service with the current employer, any continuous governmental service that was continuous with any subsequent service that the person had with a State employer, other than the current employer,

(b) was under the age of sixty years when commencing such subsequent service,

(c) is, under any Act, other than this Act, or under any regulation, by-law, award or industrial agreement, or by virtue of the conditions of the person's employment with the current employer, or by reason of any practice of the current employer, entitled, but is not entitled by virtue of the provisions of subsection (2), to have the person's service with the State employer referred to in paragraph (a) reckoned, for the purpose of calculating his or her entitlement to extended leave, as service with the current employer,

then the period of continuous governmental service, referred to in paragraph (a), shall be a prescribed period for the purpose of subsection (1).

(4) Where a person referred to in subsection (1):

(a) is not entitled under subsection (2) to have any periods of service reckoned as prescribed periods for the purpose of subsection (1),

(b) has had any continuous governmental service that was continuous with the person's service with the current employer,

(c) was under the age of sixty years when commencing service with the current employer,

and the person's service with the current employer is continuous service, then that period of continuous governmental service shall be a prescribed period for the

purpose of subsection (1).

(4A) Where a person referred to in subsection (1):

- (a) is, under any Act, other than this Act, or under any regulation, by-law, award or industrial agreement, or by virtue of the conditions of the person's employment with the current employer, or by reason of any practice of the current employer, entitled, but is not entitled by virtue of the provisions of subsection (4), to have any previous service with the employer who is the current employer reckoned, for the purpose of calculating his or her entitlement to extended leave, as service with the current employer,
- (b) has had, before commencing that previous service, any continuous governmental service that was continuous with that previous service,
- (c) was under the age of sixty years when commencing that previous service,

then the period of continuous governmental service, referred to in paragraph (b), shall be a prescribed period for the purpose of subsection (1).

- (5) Where a person referred to in subsection (1) is entitled under the foregoing provisions of this section to have any period of service with an employer reckoned as a prescribed period for the purpose of subsection (1), any other period during which such person was employed by any employer shall be a prescribed period for the purpose of subsection (1) if such person was entitled, under any Act, other than this Act, or under any regulation, by-law, award or industrial agreement, or by virtue of the conditions of his or her employment with such firstmentioned employer, or by reason of any practice of such firstmentioned employer, to have that other period reckoned, for the purpose of calculating his or her entitlement to extended leave, as service with such firstmentioned employer.
- (6) No period of service or employment shall be reckoned as a prescribed period for the purpose of subsection (1) more than once.
- (7) Where a person referred to in subsection (1) has been granted by any of the person's employers and has taken:
 - (a) any extended leave in respect of a period of service or employment which, but for this subsection, the person would have been entitled to have reckoned, for the purpose of calculating his or her entitlement to extended leave as an employee in the service of the current employer, as service with the current employer, or
 - (b) any other benefit in lieu of any such leave,

the leave so granted and taken, or the leave in lieu of which the other benefit was so granted and taken, shall be deducted from any extended leave to which such person may become entitled in respect of the person's employment in the service of the

current employer.

- (8) Where a person's current employer is a State employer referred to in paragraph (a) or (c) of the definition of **State employer** in subsection (1) of section 2 and that person has had service with another of those State employers, the provisions of this section do not apply so as to entitle that person to have reckoned, as service with the current employer, the person's service with the other of those State employers.

4 Qualifications on what amount to continuous periods of service and on the meaning of "continuous service" etc

(1)

- (a) Subject to the provisions of subsection (2), a period of service (in this subsection referred to as **earlier service**) of any person shall only be regarded, for the purposes of this Act, as being continuous with another period of service (in this subsection referred to as **later service**) of that person where the person ceased employment in the earlier service (otherwise than by reason of his or her dismissal on any ground except retrenchment or reduction of work) and, on the working day next following so ceasing, commenced employment in the later service.

For the purposes of this paragraph, no account shall be taken of any interval between the time when any such person ceased his or her employment in the earlier service and the time when the person commenced employment in the later service if such interval did not exceed two months and such person had, before ceasing to be employed in the earlier service, been accepted for employment in the later service.

For the purpose of calculating the said period of two months no account shall be taken of any period during which such person was engaged in a full-time course of training under the Commonwealth Reconstruction Training Scheme.

- (b) Where the employer of a person in his or her earlier service furnishes to the employer of such person in his or her later service a certificate that such person's earlier service terminated by reason of the person's resignation being accepted:
- (i) after being required by such firstmentioned employer, for disciplinary reasons, to resign,
 - (ii) as an alternative to being dismissed by such firstmentioned employer, or
 - (iii) after being charged with an offence against discipline in the service of such firstmentioned employer, such charge not having been finally determined in favour of or against such person before the person's resignation was accepted,
- such termination shall, for the purposes of paragraph (a) be deemed to be a dismissal, unless, in the case referred to in subparagraph (iii), such firstmentioned

employer further certifies that such person's service with the firstmentioned employer was in that employer's opinion satisfactory.

- (2) Where a person has had a period of service with the armed forces of the Commonwealth that was during, or partly during, a period of war in which the naval, military or air forces of the Commonwealth were engaged, or was wholly or partly service of a kind or nature prescribed to be special service for the purposes of this subsection, that service shall only be regarded, for the purposes of this Act, as being continuous with another period of service with an employer where such person commenced employment in the service of that employer within twelve months after ceasing service with the armed forces of the Commonwealth.

For the purpose of calculating the said period of twelve months no account shall be taken of any period during which such person was engaged in a full-time course of training under the Commonwealth Reconstruction Training Scheme.

- (3) A person's service with any employer shall not be deemed not to be continuous service by reason only that:

(a) such person was dismissed from the service of such employer because of retrenchment or reduction in work if, within twelve months after being so dismissed, the person was again employed by such employer, or

(b) such person ceased to be employed by such employer during any period during which such person was engaged in a full-time course of training under the Commonwealth Reconstruction Training Scheme,

but any period during which such person was not employed by such employer for the reason referred to in paragraph (a) or (b) shall not be, for the purposes of this Act, reckoned as service with such employer.

- (4) A reference in this section to a period during which a person was engaged in a full-time course of training under the Commonwealth Reconstruction Training Scheme shall be construed as a reference to a period commencing on the date on which that person first commenced to receive instruction in that training and ending on whichever of the following dates is the later:

(a) the date on which such person last received such instruction, or

(b) the date of publication of the result of any examination held at the end of the course in which such training was given and at which such person was a candidate.

5 Rights under other Acts unaffected

Nothing in this Act affects the rights under any other Act, or under any regulations made under any other Act, of any person to extended leave.

6 Regulations

- (1) The Governor may make regulations for or with respect to:
 - (a) prescribing the kind or nature of service with the armed forces of the Commonwealth to be special service for the purposes of subsection (2) of section 4, and
 - (b) generally for carrying out and giving effect to this Act.
- (2) The regulations may be made so as:
 - (a) to apply differently according to such factors as may be specified in the regulations, and
 - (b) to apply to service with the armed forces of the Commonwealth before the commencement of the *Transferred Officers Extended Leave (Amendment) Act 1973*, as well as to service after that commencement.
- (3) Without affecting the generality of the foregoing provisions of this section, special service may be prescribed by reference to any service defined for the purposes of, or referred to in, any Commonwealth or other Act.
- (4) (Repealed)