

PUBLIC SERVICE (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 28, 1973.

An Act to make further provisions with respect to breaches of discipline committed by certain officers employed in the Public Service; for this and other purposes to amend the Public Service Act, 1902; to validate certain matters; and for purposes connected therewith. [Assented to, 2nd May, 1973.]

BE

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No. 28, 1973 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the "Public Service (Amendment) Act, 1973".

Commencement. 2. This Act shall commence upon such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 31, 1902. 3. The Public Service Act, 1902, is amended—

Sec. 11. (a) (i) by inserting in section 11 (1) after the word "Board" where fourthly occurring the words "or to any officer or officers,";
(For purpose of inquiry Board may delegate powers.)

(ii) by inserting in section 11 (1) after the words "Governor, to any" the word "other";

Subst. sec. 56. (b) by omitting section 56 and by inserting instead the following section:—

56. (1) In this section, "officer" means officer permanently employed in the Public Service.

(2) Any officer who—

(a) commits any breach of any provision of this Act;

(b) is guilty of any misconduct;

(c) uses intoxicating beverages or drugs to excess;

(d)

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(d) is guilty of any wilful disobedience or disregard of any lawful order made or given by any person having authority to make or give the order; or

(e) is negligent, careless, inefficient or incompetent in the discharge of his duties; or

(f) is guilty of any disgraceful or improper conduct,

is guilty of a breach of discipline.

(3) An alleged breach of discipline shall be dealt with by the Board.

(4) The procedure for dealing with a breach of discipline alleged to have been committed by an officer shall be as prescribed by regulations made under section 58.

(5) Where an alleged breach of discipline is dealt with in accordance with the regulations made under section 58 and the officer charged is found to have committed the breach or admits to the person or persons dealing with the breach that he committed the breach, the Board—

(a) may decide to impose on the officer any one or more of the following punishments, that is to say, it may decide to—

(i) caution the officer;

(ii) reprimand him;

(iii) fine him;

(iv) reduce his rate of salary; or

(v) reduce him to a lower classification or position in the Public Service; or

(b)

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(b) may decide to dismiss him from the Public Service or to direct that he resign, or be allowed to resign, from the Public Service within such period as may be specified in the direction.

(6) Where the Board, in the exercise of its powers under this section, decides to direct that an officer resign, or be allowed to resign, from the Public Service within a period specified in the direction, and the officer does not resign within that period, the Board may decide to dismiss that officer from the Public Service.

(7) Subject to section 10 of the Crown Employees Appeal Board Act, 1944, a decision of the Board under subsection (5) or (6) may be given effect to at any time, but a decision of the Board under paragraph (b) of subsection (5), or under subsection (6), to dismiss an officer from the Public Service shall not be given effect to except with the approval of the Governor.

(8) Without limiting the operation of section 10 of the Crown Employees Appeal Board Act, 1944, where the Board decides—

- (a) to dismiss an officer from the Public Service, as referred to in paragraph (b) of subsection (5) or in subsection (6), that decision shall be deemed to be a decision of the nature referred to in paragraph (c) of subsection (1) of section 10 of that Act, notwithstanding that the approval of the Governor, as referred to in subsection (7), has not been obtained; or
- (b) to direct that an officer resign from the Public Service, as referred to in paragraph (b) of subsection (5), that decision shall

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be deemed to be a decision of the nature No. 28, 1973
referred to in paragraph (e) of subsection
(1) of section 10 of that Act.

(9) Nothing in this section affects the
operation of subsection (1) of section 11.

(c) by omitting sections 57 and 58 and by inserting Subst.
instead the following sections :— secs.
57, 58.

57. (1) In this section—

Suspension
of officers.

“officer” means officer permanently employed
in the Public Service;

“prescribed officer” means—

(a) a person who is the holder of, or
is acting in, any office in the
Public Service that is prescribed
as an office for the purposes of
this definition; and

(b) an officer who is prescribed as an
officer for the purposes of this
definition;

“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 charged is employed.

(2) Where an officer—

(a) is, in accordance with the regulations
made under section 58, charged with a
breach of discipline; or

(b) is charged with having committed a felony
or offence referred to in subsection (1) of
section 61,

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that officer may be suspended from duty—

- (c) if the officer is not in the Special Division—by the Board, a prescribed officer or the senior officer; or
- (d) if the officer is in the Special Division—by the Minister or by the Board,

until the charge has been dealt with.

(3) Any salary payable to a person as an officer during his suspension under this section shall be withheld and if—

- (a) he is found, as referred to in subsection (5) of section 56, to have committed the breach of discipline or admits, as referred to in that subsection, that he committed the breach; or
- (b) he is convicted of the felony or offence, as the case may be, shall, unless the Board otherwise directs, be forfeited unless the salary was due to him before his suspension.

(4) Where the suspension of an officer under this section was imposed—

- (a) by the Minister—it may be removed by the Minister at any time or by the Board when the charge has been dealt with;
- (b) by the Board—it may be removed by the Board at any time;
- (c) by a prescribed officer—it may be removed by the Board, or that officer, at any time; or
- (d) by the senior officer—it may be removed by the Board, the permanent head of the department to which the senior officer belongs, or the senior officer, at any time.

(5)

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(5) The regulations made under section 58 No. 28, 1973 may—

- (a) provide that a prescribed officer may only exercise his powers under this section in respect of officers of such class of officers as may be specified or described in the regulations; and
- (b) require a suspension imposed by a prescribed officer or a senior officer under this section to be reported in such manner as may be prescribed.

58. (1) The Board may make regulations, not inconsistent with this Act, prescribing all matters which by sections 56 and 57 are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to those sections. Regulations for purposes of sections 56 and 57.

(2) The regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

- (d) (i) by omitting from section 60 the words “under the provisions of sections fifty-six and fifty-eight of this Act” and by inserting instead the words “in accordance with the regulations made in pursuance of subsection (4) of section 56”; Sec. 60. (Procedure at inquiries.)
- (ii) by omitting from section 60 the words “or paragraph (c) of subsection two of section fifty-six”;
- (iii) by omitting from section 60 the words “The Board shall keep a complete record of all such inquiries which shall afterwards be available for reference.”;

(iv)

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(iv) by inserting at the end of section 60 the following new subsections :—

(2) Where, under subsection (1) of section 11, the Board delegates to a person or persons its powers or functions in respect of the conduct of an inquiry, provided for under the regulations made in pursuance of subsection (4) of section 56, as to the truth of any charge against an officer in respect of an alleged breach of discipline, then for the purpose of the inquiry—

(a) where the Board so delegates to only one person—that person shall have the powers, authorities, protections and immunities conferred on a sole commissioner by Division 1 of Part II of the Royal Commissions Act, 1923; or

(b) where the Board so delegates to two or more persons—each of those persons shall have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and the person presiding at the inquiry shall have the powers and authorities conferred on a Chairman of a commission by that Division,

and the provisions of the Royal Commissions Act, 1923, with the exception of section 13 and Division 2 of Part II, shall *mutatis mutandis* apply to and in respect of the inquiry and to and in respect of any witness or person summoned by or appearing before that person or those persons, as the case may be.

(3) In this section, a reference (however expressed) to a person or persons to whom the Board delegates its powers or

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functions in respect of an inquiry includes a No. 28, 1973
reference to a member of the Board or any
officer or officers to whom the Board delegates
those powers or functions.

4. (1) Sections 56, 57 and 58 of the Public Service Act, Savings,
1902, as in force immediately before the commencement of etc.
this Act, shall, notwithstanding anything in section 3, but
subject to section 5, apply to and in respect of any charge
pending immediately before that commencement in respect of
the alleged commission of an offence referred to in section 56
of that Act, as so in force.

(2) Subject to subsection (1), section 56 of the Public
Service Act, 1902, as amended by this Act, extends to
breaches of discipline alleged to have been committed before
the commencement of this Act, other than breaches of discip-
line that would not, had this Act not come into force, have
been punishable under the Public Service Act, 1902, as an
offence specified in section 56 (1) of that Act.

5. (1) Where—

Validation.

- (a) the Board has, at any time before the commence-
ment of this Act, purported to appoint one or more
persons (in this section referred to as "the appointee
or appointees") to conduct an inquiry as to the
truth of a charge against an officer of the Public
Service in respect of an offence specified in section
56 (1) of the Public Service Act, 1902, as in force
at any time before that commencement; and
- (b) the officer charged was not, before the appointment
of the appointee or appointees, suspended by the
Board, his permanent head or the Minister under
section 56, 57 or 58 of that Act, as so in force, as
the case may be, in relation to the charge,

the

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No. 28, 1973 the appointment of the appointee or appointees, and anything done or omitted to be done by the appointee or appointees at or in connection with the inquiry, and anything done or omitted to be done in consequence of the inquiry or in consequence of the report made by the appointee or appointees to the Board in relation thereto, shall, subject to subsection (2), be as valid and effectual as if the officer charged had been suspended by his permanent head under section 56, or by the Minister under section 57, of that Act, as so in force, as the case may be.

(2) Subsection (1) does not have effect in any case where a court of competent jurisdiction has held or holds, in proceedings commenced before the commencement of this Act, that the appointment of the appointee or appointees was invalid.