

**PUBLIC SERVICE (AMENDMENT) ACT, 1980,  
No. 197**

**New South Wales**



ANNO VICESIMO NONO

**ELIZABETHÆ II REGINÆ**

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**Act No. 197, 1980.**

An Act to amend the Public Service Act, 1979, with respect to the delegation of functions conferred or imposed by that Act, the appointment of persons to positions in the Public Service, and for other purposes. [Assented to, 24th December, 1980.]

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*Public Service (Amendment).*

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**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 :—

1. This Act may be cited as the "Public Service (Amendment) Act, 1980". Short  
title.

2. (1) Except as provided in this section, this Act shall commence on the date of assent to this Act. Commence-  
ment.

(2) Section 4 shall, in its application to a provision of Schedule 1, commence or be deemed to have commenced on the day on which that provision commences or is deemed to have commenced, as the case may require.

(3) Schedule 1 (1), (2), (3) and (9) shall be deemed to have commenced on 28th September, 1979.

(4) Schedule 1 (8) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE PUBLIC SERVICE ACT, 1979.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The Public Service Act, 1979, is amended in the manner set forth in Schedule 1. Amendment  
of Act No.  
89, 1979.

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*Public Service (Amendment).*


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Savings  
and tran-  
sitional  
provisions.

**5.** Schedule 2 has effect.

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Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE PUBLIC SERVICE ACT, 1979.

(1) Section 7 (4)—

After section 7 (3), insert :—

(4) References in section 49 of the Constitution Act, 1902, to a Department shall be read and construed as including references to an Administrative Office.

(2) Section 19 (d)—

Omit the paragraph, insert instead :—

(d) if he is absent from duty for 30 days (whether or not partly or wholly consecutive) in any 12 months, except on leave granted by the Minister, unless his absence is occasioned by illness or other unavoidable cause;

(3) (a) Section 46 (6) (b)—

Omit the paragraph, insert instead : —

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

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*Public Service (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC SERVICE ACT, 1979—*continued.*

(b) Section 46 (7)—

After section 46 (6), insert :—

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

(4) (a) Section 48 (1A)—

After section 48 (1), insert :—

(1A) In this section, “prescribed officer”, in relation to a Department, means an officer of the Department, and includes a person holding an appointment to or in the Department and (where the Department is an Administrative Office) a person holding an appointment to or in the relevant body, organisation or group specified in Schedule 2, but does not include a temporary employee within the meaning of this Act.

(b) Section 48 (2), (3), (7)—

Omit “officer” wherever occurring, insert instead “prescribed officer”.

(c) Section 48 (5)—

Omit “officer” where firstly occurring, insert instead “prescribed officer”.

(d) Section 48 (8)—

Omit “an officer”, insert instead “a prescribed officer”.

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*Public Service (Amendment).*


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**SCHEDULE 1—*continued.***
**AMENDMENTS TO THE PUBLIC SERVICE ACT, 1979—*continued.***
**(5) Section 63 (2) (b)—**

Omit the paragraph, insert instead :—

- (b) that there is, in the opinion of the Board, no available officer in the Public Service who is as capable and qualified, with respect to the position to which the certificate relates, as the person proposed to be appointed; and

**(6) Section 64 (2)—**

Omit the subsection, insert instead :—

- (2) No such appointment shall be made unless the Board has reported to the Governor that there is, in its opinion, no available officer in the Public Service who is as capable and qualified, with respect to the position to which the report relates, as the person proposed to be appointed.

**(7) Section 65A—**

After section 65, insert :—

65A. (1) The appointment or failure to appoint a person to a vacant position in the Public Service, or any matter, question or dispute relating thereto, 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) Subsection (1) does not limit the meaning of the expression "industrial matters" as defined for the purposes of this Act.

Provisions  
as to  
appeals,  
etc.

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*Public Service (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC SERVICE ACT, 1979—*continued.*

(4) A certificate or report given or made or purporting to be given or made under section 63 or 64 shall be conclusive evidence that there is, in the opinion of the Board, no available officer in the Public Service who is as capable and qualified, with respect to the position to which the certificate or report relates, as the person proposed to be appointed.

(5) A certificate or report given or made or purporting to be given or made under section 63 or 64, and any decision, proceeding, step or other matter involved in the giving or making of the certificate or report, shall not be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, quashed or called in question by the Industrial Commission of New South Wales or any other court.

(6) Without affecting the Government and Related Employees Appeal Tribunal Act, 1980, no proceeding, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of—

- (a) any certificate or report referred to in subsection (5);
- (b) any decision, proceeding, step or other matter involved in the giving or making of any such certificate or report; or
- (c) 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.

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*Public Service (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PUBLIC SERVICE ACT, 1979—*continued.*

## (8) Section 111—

Omit the section, insert instead :—

Require-  
ments as to  
cizen-  
ship, etc.

111. (1) A person is not eligible to be appointed as an officer unless—

- (a) he is an Australian citizen; or
- (b) he is 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,

and, if so required by or under the regulations, he produces in accordance with the regulations such evidence with respect to any matters referred to in this section as is prescribed.

(2) An officer who is not an Australian citizen and who ceases to satisfy or does not satisfy the requirements of subsection (1) (b) is not eligible to continue in employment as an officer in the Public Service and shall be dismissed from his position as such an officer by the Governor.

## (9) Section 133 (2) (j)—

Omit the paragraph, insert instead :—

- (j) 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;
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*Public Service (Amendment).*

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SCHEDULE 2.

Sec. 5.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. A certificate or report given or made under section 63 or 64 of the Public Service Act, 1979, before the date of assent to this Act shall be deemed to be a certificate or report duly given or made in accordance with that section as amended by this Act and to be in the terms required by that section as so amended.

2. The provisions of section 65A of the Public Service Act, 1979, as amended by this Act, apply to and in respect of certificates or reports given or made or purporting to be given or made under section 63 or 64 of that Act before, and to acts or omissions occurring before, as well as on or after, the date of assent to this Act.

3. Nothing in clauses 1 and 2, or in the amendments made by this Act, affects any proceedings commenced before the date of assent to this Act.

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