



TASMANIA

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**TASMANIAN STATE SERVICE AMENDMENT ACT 1993**

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**No. 60 of 1993**

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**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 29 amended (Appointment, &c., of certain Heads of Agencies)
6. Section 30 amended (Vacation of office of Head of Agency and holder of prescribed office)
7. Section 33B amended (Interpretation for purposes of Part 6)
8. Section 35 amended (Filling of vacancies in positions)
9. Section 38 amended (Temporary employment)
10. Section 42 amended (Transfer of employees)
11. Section 45 amended (Provisions relating to position of seconded employee)
12. Section 46 repealed
13. Sections 47, 48 and 49 substituted
  - 47—Declaration of permanent employee to be surplus to requirements of Agency
  - 48—Redeployment Register
  - 49—Commissioner to endeavour to transfer certain employees

14. Section 50 substituted  
50—Re-appointment as permanent employee
15. Section 51 substituted  
51—Appointment of former invalidity pensioners
16. Section 66 amended (Appeals to Commissioner for Review)
17. *Tasmanian Development Act 1983* amended
18. Transitional provisions



## TASMANIAN STATE SERVICE AMENDMENT ACT 1993

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No. 60 of 1993

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

[Royal Assent 30 September 1993]

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

### Short title

1—This Act may be cited as the *Tasmanian State Service Amendment Act 1993*.

### Commencement

2—This Act commences on the day on which it receives the Royal Assent.

**Principal Act**

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

**Section 3 amended (Interpretation)**

- 4—Section 3 (1) of the Principal Act is amended as follows:—
- (a) by omitting the definitions of “declared employee” and “redeployment declaration”;
  - (b) by omitting “or section 38 (11)” from the definition of “permanent employee” and substituting “, 38 (11) or 51”;
  - (c) by inserting after the definition of “redeployment declaration” the following definition:—
 

**“Redeployment Register”** means the register kept by the Commissioner pursuant to section 48;
  - (d) by omitting the definition of “Unattached List”.

**Section 29 amended (Appointment, &c., of certain Heads of Agencies)**

5—Section 29 (13) of the Principal Act is amended by omitting all the words following “elect” and substituting “, within 14 days of so ceasing to be the Head of an Agency or the holder of a prescribed office, to be re-appointed as a permanent employee in accordance with section 50”.

**Section 30 amended (Vacation of office of Head of Agency and holder of prescribed office)**

- 6—Section 30 of the Principal Act is amended as follows:—
- (a) by inserting the following paragraph in subsection (1) after paragraph (b):—
    - (ba) on the termination of his or her appointment under subsection (2A); or

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\* No. 25 of 1984. For this Act, as amended to 30 November 1990, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1991, No. 59 of 1992 and No. 49 of 1993 and S.R. 1991, Nos. 109 and 143, S.R. 1992, Nos. 22, 113 and 175 and S.R. 1993, Nos. 7 and 34.

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

(2A) The Governor may terminate the appointment of a person holding office under section 29 in accordance with the provisions specified in that person's instrument of appointment.

### **Section 33B amended (Interpretation for purposes of Part 6)**

7—Section 33B of the Principal Act is amended by omitting “section 42” and substituting “section 42, 45, 49 or 50”.

### **Section 35 amended (Filling of vacancies in positions)**

8—Section 35 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (c) “46, 49,” and substituting “45, 49, 50,”;
- (b) by omitting from subsection (4) (a) “Unattached List” and substituting “Redeployment Register”.

### **Section 38 amended (Temporary employment)**

9—Section 38 (8) of the Principal Act is amended by omitting all the words following “elect” and substituting “, within 14 days of the termination or expiration of the contract of service, to be re-appointed as a permanent employee in accordance with section 50”.

### **Section 42 amended (Transfer of employees)**

10—Section 42 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “of similar classification or” and substituting “having a similar”;
- (b) by omitting from subsection (2) “of similar classification or” and substituting “having a similar”;
- (c) by omitting from subsection (3) “of similar classification or” and substituting “having a similar”;
- (d) by omitting from subsection (3) “capable,” and substituting “capable of performing or is”;

- (e) by omitting from subsection (3A) “on the application, in writing,” and substituting “with the written consent”;
- (f) by omitting from subsection (3A) “of lower classification or” and substituting “having a lower”;
- (g) by omitting from subsection (3A) “capable, competent and qualified to perform” and substituting “capable of performing, or is competent or qualified to perform,”;
- (h) by omitting subsections (4) and (5) and substituting the following subsections:—

(4) Subject to subsection (4A), the Minister may transfer an employee from a position in an Agency to a vacant position having a similar salary in another Agency.

(4A) The Minister may not transfer an employee from a position in an Agency to a vacant position in another Agency having a lower salary unless the employee has consented in writing to such a transfer.

(5) In transferring an employee under subsection (4), the Minister must—

- (a) have regard to the knowledge, skills, qualifications and experience of the employee; and
- (b) be satisfied that the employee can reasonably be required to perform the duties of the position.

(5A) An employee who is transferred under subsection (4) is to be paid, for a period of 12 months from the day on which the employee is transferred, a salary not less than the salary which the employee was paid in respect of the position to which the employee was appointed as a permanent employee before being so transferred.

(5B) After the expiration of the 12 month period referred to in subsection (5A), the employee is to be paid the salary assigned to the classification in respect of the position to which the employee has been transferred.

(5C) The Minister may delegate the power to transfer an employee from a position in an Agency to a vacant position in another Agency.

- (i) by inserting in subsection (6) “or the Minister” after “Agency”;
- (j) by inserting in subsection (7) “or by the Minister” after “employed”.

### **Section 45 amended (Provisions relating to position of seconded employee)**

**11**—Section 45 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:—

(3) Upon the cessation of an agreement or arrangement under section 43 (1) or 44 (2), the Head of the Agency in which the employee was employed immediately before the agreement or arrangement was entered into must, if the position held by the employee immediately before the agreement or arrangement was entered into has been declared vacant or abolished, transfer the employee to a vacant position in that Agency having a similar salary to the position held by the employee immediately before the agreement or arrangement was entered into or, with the employee’s consent, to a position having a lower salary, being a position the duties of which the Head considers the employee is capable of performing or is competent or qualified to perform.

(4) An employee is not entitled to appeal to the Commissioner for Review against his or her transfer or the transfer of another employee under subsection (3).

### **Section 46 repealed**

**12**—Section 46 of the Principal Act is repealed.

### **Sections 47, 48 and 49 substituted**

**13**—Sections 47, 48 and 49 of the Principal Act are repealed and the following sections are substituted:—

**Declaration of permanent employee to be surplus to requirements of Agency**

47—(1) Where the Head of an Agency considers that, because of a prescribed reason, a permanent employee employed in that Agency has become surplus to the requirements of that Agency, the Head of the Agency may, subject to subsection (2), make a declaration in writing that the employee is surplus to the requirements of the Agency.

(2) An employee must not be declared surplus to the requirements of an Agency unless the Head of the Agency is unable to immediately transfer the employee to another position in that Agency in accordance with section 42.

(3) The Head of an Agency must—

- (a) state in a declaration under subsection (1) the prescribed reason for which the Head considers the employee to be surplus to the requirements of that Agency; and
- (b) as soon as practicable after making such a declaration, serve a copy of the declaration on the employee.

(4) Where the Head of an Agency has served a copy of a declaration on an employee, the Head must, subject to subsection (5), request the Commissioner to transfer the employee in accordance with section 49.

(5) The Head of an Agency must not take action under subsection (4) unless—

- (a) the employee has waived the right to appeal under section 66 (1B) or the period within which the employee may appeal under section 66 (1B) has expired and no such appeal has been made; or
- (b) if such an appeal has been made—
  - (i) the appeal has been heard and determined and the appeal has been dismissed; or
  - (ii) the appeal has been withdrawn.



(6) Where the Head of an Agency has received written notification from the Commissioner of the Commissioner's inability to transfer the employee in accordance with section 49, the Head must serve a notice on the employee calling on the employee to resign or retire from the State Service within the period specified in the notice.

(7) Where the Head of an Agency has served a notice on an employee under subsection (6), the Head may, before the expiration of the period specified in the notice, revoke the notice by notice in writing served on the employee.

(8) If an employee who is served with a notice under subsection (6) does not resign or retire within the period specified in the notice, the employment of the employee in the State Service is terminated 7 days after the expiration of the period specified in the notice.

(9) For the purposes of this section, "**prescribed reason**" means any one of the following reasons:—

- (a) an employee is included in a class of employees employed in an Agency which comprises a greater number of employees than is necessary for the effective, efficient or economical operation of that Agency;
- (b) there has been an alteration in the structural organization of an Agency which has resulted in the duties undertaken by an employee in that Agency being no longer necessary or required;
- (c) there has been an alteration in the functions performed by an Agency which has resulted in the duties undertaken by an employee in that Agency being no longer necessary or required;
- (d) there has been an alteration in the duties of a position in an Agency which has resulted in the classification or salary of an employee who holds that position being no longer appropriate for that position;

- (e) the classification of the position held by an employee has been varied pursuant to section 33 (1) (b) and the employee has not been promoted to the vacancy created as a result of the variation of the classification;
- (f) an employee's position has been abolished.

### **Redeployment Register**

48—The Commissioner must keep a register to be called the “**Redeployment Register**” in which the Commissioner must register the names of permanent employees in respect of whom the Commissioner has received a request under section 47.

### **Commissioner to endeavour to transfer certain employees**

49—(1) Where the Commissioner has received a request under section 47, the Commissioner must take such action as the Commissioner considers reasonable and practicable to identify a vacant position in the State Service to which the employee could be transferred.

(2) The Commissioner may transfer the employee from a position in an Agency to a vacant position in another Agency.

(3) In transferring an employee under subsection (2), the Commissioner must—

- (a) have regard to the knowledge, skills, qualifications and experience of the employee; and
- (b) be satisfied that the employee can reasonably be required to perform the duties of the position.

(4) An employee who is transferred under subsection (2) is to be paid for a period of 12 months from the day on which the employee is transferred a salary not less than the salary which the employee was paid in respect of the position to which the employee was appointed as a permanent employee before being so transferred.

(5) After the expiration of the 12 month period referred to in subsection (4), the employee is to be paid the salary assigned to the classification in respect of the position to which the employee has been transferred.

(6) The power conferred on the Commissioner under this section is to be construed as including a power to transfer an employee from one locality to another locality.

(7) An employee must not refuse to commence duties in the position or locality to which the employee is transferred by the Commissioner.

(8) If the Commissioner is unable to transfer an employee under subsection (2) within 12 months of the receipt of a request from the Head of an Agency under section 47 (4), the Commissioner must notify in writing the Head of the Agency of the Commissioner's inability to do so.

(9) An employee is not entitled to appeal to the Commissioner for Review against the transfer of another employee, or the failure of the Commissioner to transfer the employee, under subsection (2).

## **Section 50 substituted**

**14**—Section 50 of the Principal Act is repealed and the following section is substituted:—

### **Re-appointment as permanent employee**

50—(1) An employee or a person who elects under section 29 (13) or section 38 (8) to be re-appointed as a permanent employee is deemed to be a permanent employee in the Agency in which the employee or person was appointed or employed immediately before the employee or person so elected.

(2) An employee or a person who is deemed to be a permanent employee under subsection (1) is entitled to be paid a salary equal to the salary which the employee or person would have been entitled to be paid if the employee or person had remained at the classification assigned to the position which the employee or person held immediately before becoming the Head of an Agency, the holder of a prescribed office or a contract employee.

(3) The Head of the Agency in which the employee or person is deemed to be employed must transfer the employee to a vacant position in that Agency, being a position the duties of which the Head considers the employee is capable of performing or is competent or qualified to perform.

(4) An employee is not entitled to appeal to the Commissioner for Review against the transfer of another employee under subsection (3).

### **Section 51 substituted**

**15**—Section 51 of the Principal Act is repealed and the following section is substituted:—

#### **Appointment of former invalidity pensioners**

51—(1) Where the Commissioner receives a report from the Retirement Benefits Board stating that the Board is of the opinion that the health of an invalidity pensioner under the *Retirement Benefits Act 1982* is so restored as to enable that person to perform the duties of any office or position that is available and which that person may be required to accept, the Commissioner may take such action as the Commissioner considers reasonable and practicable to identify a vacant position in the State Service which, in the Commissioner's opinion, the person would be capable of performing or would be competent or qualified to perform.

(2) The Commissioner may appoint a person referred to in subsection (1) to a vacant position in the State Service identified under subsection (1).

(3) An employee is not entitled to appeal to the Commissioner for Review against the appointment of a person under subsection (2).

(4) Part 6 does not apply to an appointment under subsection (2).

**Section 66 amended (Appeals to Commissioner for Review)**

**16**—Section 66 of the Principal Act is amended as follows:—

- (a) by omitting paragraph (e) of subsection (1);
- (b) by inserting after subsection (1) the following subsections:—

(1A) An employee is not entitled to appeal under any provision of this Act against a declaration under section 47, except under subsection (1B) of this section, or against the serving of a notice under section 47.

(1B) An employee may appeal to the Commissioner for Review on the ground that, before making a declaration under section 47, the Head of the Agency failed to exercise in respect of that employee a power under section 42 (3) or (3A) in relation to a vacancy that was available in that Agency at the date on which the declaration was made.

**Tasmanian Development Act 1983 amended**

**17**—Clause 10 of Part II of Schedule 3 of the *Tasmanian Development Act 1983* is amended by omitting subclauses (2) and (3) and substituting the following subclauses:—

(2) Where the Commissioner has received notification under subclause (1), the Commissioner must take such action as the Commissioner considers reasonable and practicable to identify a vacant position in the State Service which, in the Commissioner's opinion, the former officer would be capable of performing or would be competent or qualified to perform.

(3) The Commissioner may appoint the former officer to a vacant position in the State Service having a similar salary, or with the former officer's consent, having a lower salary, being a position the duties of which the Commissioner considers the former officer is capable of performing or is competent or qualified to perform having regard to the skills, experience and efficiency gained by the former officer in the service of the Authority and the length of that service.

(4) If the Commissioner is unable to appoint a former officer to a vacant position in the State Service under subclause (3) within 12 months of the receipt of notification under subclause (1), the Commissioner must notify the Authority of the Commissioner's inability to do so.

(5) An employee, within the meaning of the *Tasmanian State Service Act 1984*, is not entitled to appeal to the Commissioner for Review against the appointment of a former officer under subclause (3).

### **Transitional provisions**

**18—(1)** Sections 49 and 50 of the Principal Act, as in force immediately before the commencement of this Act, continue to apply to an employee whose name was registered on the Unattached List, in existence immediately before that commencement, by virtue of being declared to be eligible for redeployment under section 48, as in force before that commencement, as if those sections had not been repealed by this Act.

(2) Any employee or person—

(a) who, immediately before the commencement of this Act, had elected under section 29 (13) or section 38 (8) to have his or her name registered on the Unattached List, in existence immediately before that commencement; or

(b) whose name was registered on that Unattached List, immediately before that commencement, as a result of the cessation of an agreement or arrangement under section 43 (1) or 44 (2)—

is deemed to be a permanent employee in the Agency in which the employee or person was appointed or employed immediately before the employee's or person's name was so registered or immediately before the employee or person entered into an agreement or arrangement under section 43 (1) or 44 (2).

(3) An employee or a person who is deemed to be a permanent employee under subsection (2) is entitled to be paid a salary equal to the salary which the employee or person would have been entitled to be paid if the employee or person had remained at the classification assigned to the position which the employee or person held immediately before becoming the Head of an Agency, the holder of a prescribed office or a contract employee.

(4) The Head of the Agency in which the employee or person is deemed to be a permanent employee must transfer the employee to a vacant position in that Agency, being a position the duties of which the Head considers the employee is capable of performing or is competent or qualified to perform.

(5) An employee is not entitled to appeal to the Commissioner for Review against the transfer of another employee under subsection (4).

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*[Second reading presentation speech made in:—  
House of Assembly on 4 August 1993  
Legislative Council on 19 August 1993]*

