

PUBLIC SERVICE (AMENDMENT) BILL, 1980

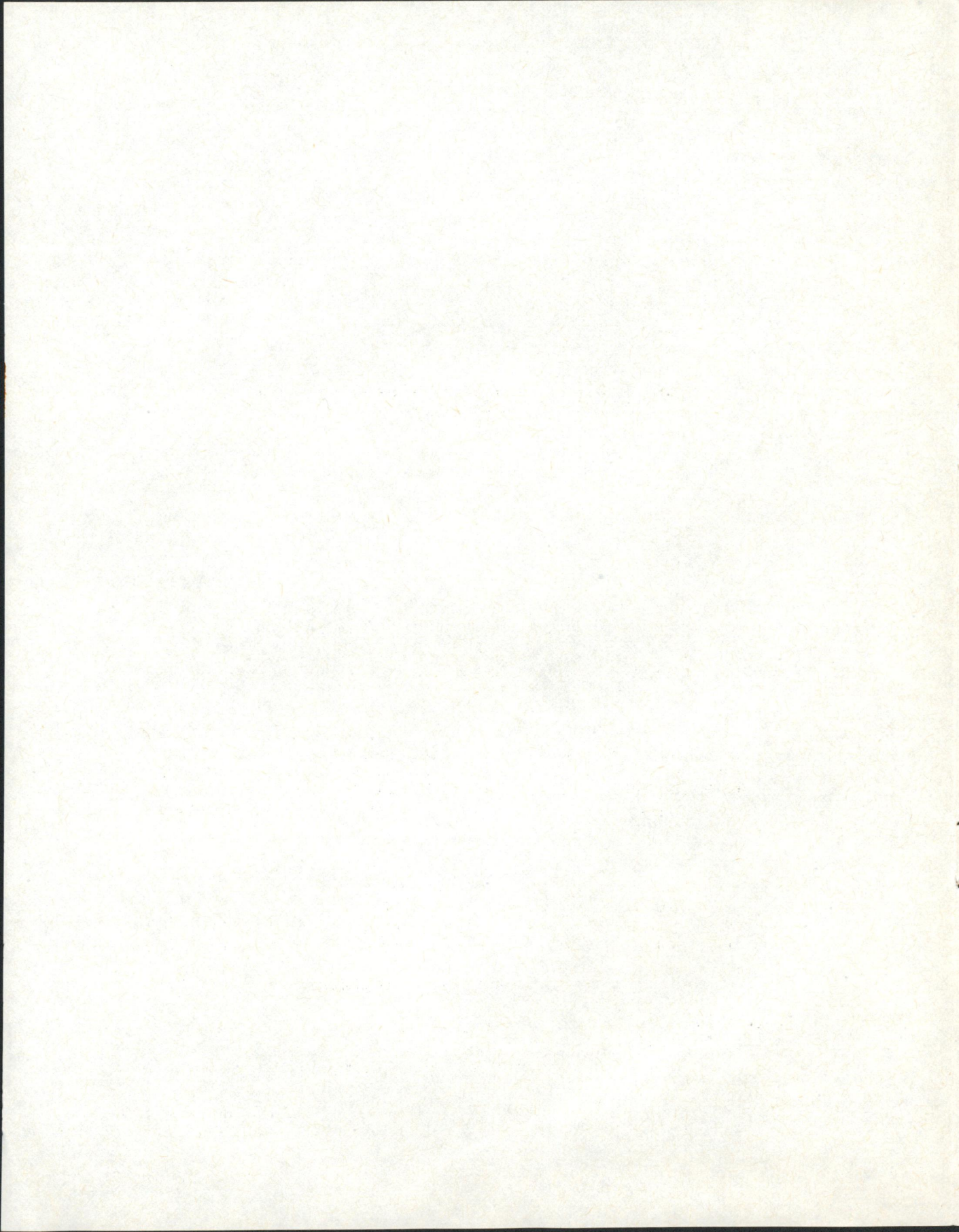
EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Public Service Act, 1979, so as—

- (a) to make it clear that, in connection with administrative changes, a reference in section 49 of the Constitution Act, 1902, to a Department includes a reference to an Administrative Office referred to in the Public Service Act, 1979 (Schedule 1 (1));
- (b) to provide that a member of the Public Service Board is not to be deemed to have vacated his office on account of absence if the absence was occasioned by illness or other unavoidable cause (Schedule 1 (2));
- (c) to facilitate the exercise of the functions of a Department Head by other persons, and in particular to authorise a person who has the status or functions of a Department Head in relation to an Administrative Office to delegate his functions as such to certain members or employees of the Administrative Office (Schedule 1 (3), (4));
- (d) to provide that a person who is not an officer in the Public Service may be appointed to the Public Service if the Public Service Board certifies that there is 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 (Schedule 1 (5), (6));
- (e) to provide that such a certificate is conclusive and that no appeal lies in respect of any such appointment (Schedule 1 (7));
- (f) to provide that persons are eligible for appointment as officers of the Public Service if they are either Australian citizens or persons who are resident in Australia and whose continued presence in Australia is not subject to any legal limitation as to time (Schedule 1 (8)); and
- (g) to make it clear that regulations may be made under the Public Service Act, 1979, providing for the exercise of the functions attaching to a vacant position (Schedule 1 (9)),

and to make other provisions of a minor, consequential or ancillary nature.



PUBLIC SERVICE (AMENDMENT) BILL, 1980

No. , 1980.

A BILL FOR

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.

[MR WRAN—19 November, 1980.]

Public Service (Amendment).

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 :—

5 **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. Commencement.

10 (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.

15 (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.

20 **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.

Public Service (Amendment).

5. Schedule 2 has effect.

Savings
and tran-
sitional
provisions.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE PUBLIC SERVICE ACT, 1979.

(1) Section 7 (4)—

5 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)—

10 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
15 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
20 under this Act on a Department Head.

Public Service (Amendment).

SCHEDULE 1—*continued.*

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

(b) Section 46 (7)—

After section 46 (6), insert :—

5 (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)
10 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 :—

15 (1A) In this section, “prescribed officer”, in
 relation to a Department, means an officer of the
 Department, and includes a person holding an appoint-
 ment to or in the Department and (where the
 Department is an Administrative Office) a person
20 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)—

25 Omit “officer” wherever occurring, insert instead “pre-
 scribed officer”.

(c) Section 48 (5)—

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

(d) Section 48 (8)—

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

Public Service (Amendment).

SCHEDULE 1—*continued.*

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

(5) Section 63 (2) (b)—

Omit the paragraph, insert instead :—

- 5 (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 report relates, as the person proposed to be appointed; and

10 (6) Section 64 (2)—

Omit the subsection, insert instead :—

- 15 (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 :—

- 20 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. **Provisions as to appeals, etc.**

- 25 (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.

Public Service (Amendment).

SCHEDULE 1—*continued.*

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

5 (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.

10 (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.

20 (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);

25 (b) any decision, proceeding, step or other matter involved in the giving or making of any such certificate or report; or

30 (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.

Public Service (Amendment).

SCHEDULE 1—*continued.*

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

(8) Section 111—

Omit the section, insert instead :—

5 111. (1) A person is not eligible to be appointed as an officer unless—

Require-
ments as to
cizen-
ship, etc.

(a) he is an Australian citizen; or

10 (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.

15

(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.

20

(9) Section 133 (2) (j)—

Omit the paragraph, insert instead :—

25 (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;

Public Service (Amendment).

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.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980

(20c)

1. The first part of the document is a letter from the Secretary of the State to the Governor, dated 18th March 1830.

The letter is addressed to the Governor and is signed by the Secretary of the State. It contains the following text:

"I have the honor to acknowledge the receipt of your letter of the 15th inst. in relation to the petition of the citizens of the County of ... for the establishment of a ..."

The letter is dated 18th March 1830 and is signed by the Secretary of the State.

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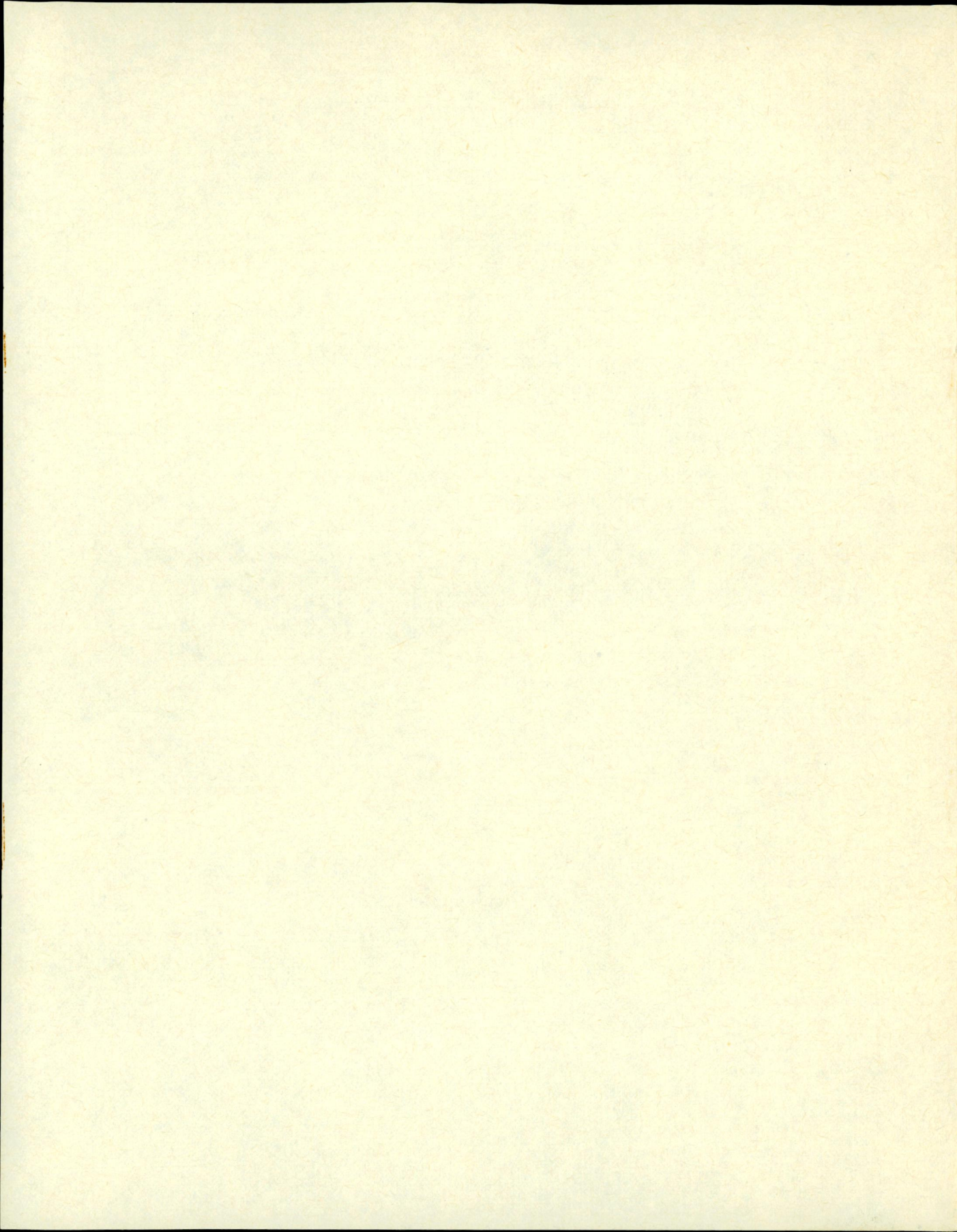
The letter is signed by the Secretary of the State and is dated 18th March 1830. It contains the following text:

"I have the honor to acknowledge the receipt of your letter of the 15th inst. in relation to the petition of the citizens of the County of ... for the establishment of a ..."

The letter is signed by the Secretary of the State and is dated 18th March 1830. It contains the following text:

EXHIBIT

STATE OF NEW YORK (SENIOR) 1830



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

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

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.]

Public Service (Amendment).

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, 1980".

Commence-
ment.

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

(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.

Schedules.

3. This Act contains the following Schedules :—

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

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment
of Act No.
89, 1979.

4. The Public Service Act, 1979, is amended in the manner set forth in Schedule 1.

Public Service (Amendment).

5. Schedule 2 has effect.

Savings
and tran-
sitional
provisions.

SCHEDULE 1.

Sec. 4.

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.

Public Service (Amendment).

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”.

Public Service (Amendment).

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. ^{Provisions as to appeals, etc.}

(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.

Public Service (Amendment).

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.

Public Service (Amendment).

SCHEDULE 1—*continued.*

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

(8) Section 111—

Omit the section, insert instead :—

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

Require-
ments as to
citizen-
ship, etc.

(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;

Public Service (Amendment).

Sec. 5.

SCHEDULE 2.

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.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 24th December, 1980.*