

TELECOMMUNICATIONS ACT 1975

No. 55 of 1975

An Act relating to the Provision of Telecommunications Services within Australia.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Telecommunications Act 1975*.¹ Short title.

2. (1) Part I, section 5, Part IV, Division 1 of Part V and sections 75 and 97 of this Act shall come into operation on the day on which this Act receives the Royal Assent.¹ Commencement.

(2) The remaining provisions of this Act shall come into operation on the date fixed under sub-section 2 (2) of the *Postal Services Act 1975*.

3. (1) In this Act, unless the contrary intention appears— Interpretation.

“approved bank” means a bank approved by the Treasurer for the purposes of the provision in which the expression occurs;

“article” includes any substance or thing;

“authorized person” means a person authorized by the Commission for the purpose of the provision in which the expression occurs;

“Chairman” means the Chairman of the Commission;

“Chief General Manager” means the Chief General Manager of the Commission;

“commencing date” means the date fixed by Proclamation under sub-section 2 (2) of the *Postal Services Act 1975*;

“Commission” means the Australian Telecommunications Commission established by this Act;

“Commissioner” means the Managing Director or another Commissioner holding office under section 22;

“convention” means a convention to which Australia is a party or an agreement or arrangement between Australia and another country or other countries;

“Deputy Chairman” means the Deputy Chairman of the Commission;

“employee” means a person engaged by the Commission as a temporary employee under section 42;

“line” means wire, cable, tube, conduit, fibre, waveguide or other physical medium used, or intended for use, in connexion with a telecommunications service;

“Managing Director” means the Managing Director of the Commission;

“officer” means a person who is appointed to the Service under section 39 or deemed to have been appointed to the Service under Part IV of the Transitional Provisions Act;

“organization” means an organization registered under the *Conciliation and Arbitration Act 1904-1974*;

“part-time Commissioner” means a Commissioner other than the Managing Director;

“Service” means the Australian Telecommunications Commission Service established by section 38;

“telecommunications installation” means—

- (a) a line; or
- (b) any equipment, apparatus, structure, tower, antenna, tunnel, manhole, pit or pole used, or intended for use, in connexion with a telecommunications service;

“telecommunications message” means—

- (a) a material record of a communication or information sent or delivered to the Commission for transmission over a telecommunications system; or
- (b) a material record issued by the Commission as a record of a communication or information transmitted over such a telecommunications system;

“telecommunications service” means—

- (a) a service for transmitting, by means of electric or electromagnetic energy—
 - (i) sounds, including speech and music;
 - (ii) visual images;
 - (iii) signals for the communication, whether as between persons and persons, things and things or persons and things, of any matter otherwise than in the form of sounds or visual images; or
 - (iv) signals for the actuation or control of machinery or apparatus; or
- (b) a service for receiving any such sounds, images or signals that have been transmitted by means of electric or electro-magnetic energy;

“telecommunications system” means a system controlled by the Commission in connexion with the provision of a telecommunications service;

“Transitional Provisions Act” means the *Postal and Telecommunications Commissions (Transitional Provisions) Act 1975*;

“Wireless Telegraphy Act” means the *Wireless Telegraphy Act 1905-1973*.

(2) A reference in this Act to injurious interference from an electric line or installation is a reference—

- (a) to any impairment or potential impairment of the normal operation of a telecommunications system; and
- (b) to any hazard or potential hazard to—
 - (i) a telecommunications system or a telecommunications installation;
 - (ii) officers and employees in the course of their duties; or
 - (iii) users of a telecommunications service provided by the Commission,

which results, or may result, from the transmission of electricity over an electric line or through any apparatus connected to an electric line, from the use of electricity in, or in connexion with, any machinery, engines, meters, lamps, transformers, fittings, apparatus or works or from the generation or supply of electricity.

(3) In this Act, unless the contrary intention appears—

- (a) a reference to a telecommunications service provided by the Commission includes a reference to a telecommunications service that was, prior to the commencing date, provided by the Postmaster-General and that is, on and after that date, maintained by the Commission;
- (b) a reference to information includes a reference to music, to other sounds, to visual images and to signals referred to in subparagraphs (iii) and (iv) of paragraph (a) of the definition of “telecommunications service” in sub-section (1); and
- (c) a reference to the original position—
 - (i) of a person who has been dismissed under section 58, 61 or 62 or is to be deemed, under section 65, to have resigned; or
 - (ii) of an officer who has been transferred to another position under section 58, 61 or 62,

is a reference to the position held by that person or officer immediately before the dismissal, resignation or transfer, as the case may be, or, if the person or officer was then performing the duties of another position to which he had been temporarily transferred under section 59, to the position held by him immediately before that temporary transfer.

(4) Where a provision of this Act authorizes the Commission to enter upon, or occupy, land or water for any purpose, the provision shall be read as also authorizing an officer or employee, a person acting for or

on behalf of the Commission under a contract and an employee of such a person to enter upon the land or waters for that purpose and with such vehicles or vessels as are necessary for that purpose.

PART II—ESTABLISHMENT, FUNCTIONS AND GENERAL POWERS OF THE COMMISSION

Establishment of Commission.

4. There is established by this Act a Commission by the name of the Australian Telecommunications Commission.

Functions of the Commission.

5. The functions of the Commission are—

- (a) to plan, establish, maintain and operate telecommunications services within Australia;
- (b) to operate such other services as the Commission is authorized by this Act to operate;
- (c) to provide, at the request of the Australian Government, technical assistance outside Australia in relation to the planning, establishment, maintenance and operation of telecommunications services in countries outside Australia; and
- (d) to do anything incidental or conducive to the performance of any of the preceding functions.

Duties of Commission.

6. (1) The Commission shall perform its functions in such a manner as will best meet the social, industrial and commercial needs of the Australian people for telecommunications services and shall, so far as it is, in its opinion, reasonably practicable to do so, make its telecommunications services available throughout Australia for all people who reasonably require those services.

(2) In performing its functions in accordance with sub-section (1), the Commission—

- (a) shall comply with any directions given to it under section 7; and
- (b) shall have regard to—
 - (i) the desirability of improving and extending its telecommunications services in the light of developments in the field of communications;
 - (ii) the need to operate its services as efficiently and economically as practicable; and
 - (iii) the special needs for telecommunications services of Australian people who reside or carry on business outside the cities.

(3) Nothing in this section shall be taken—

- (a) to prevent the Commission from interrupting, suspending or restricting, in the case of emergency, a service provided by it; or

(b) to impose on the Commission a duty that is enforceable by proceedings in a court.

(4) It is the duty of the Commission, in performing its functions, to comply with the provisions of any Convention to the extent that it imposes obligations on Australia in relation to matters within the functions of the Commission.

7. (1) The Minister may, after consultation with the Commission, give to the Commission, in writing, such directions, with respect to the performance of its functions and the exercise of its powers, as appear to the Minister to be necessary in the public interest.

Minister may give directions to the Commission.

(2) Where the Minister gives a direction to the Commission under sub-section (1), the Minister shall cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days after the direction is so given.

(3) Sub-section (1) does not authorize the Minister to give a direction with respect to rentals or charges referred to in section 11.

8. The Commission is not authorized by this Act to establish, erect, maintain or use stations and appliances for the purpose of transmitting or receiving messages by means of wireless telegraphy except in accordance with licences granted to the Commission under the Wireless Telegraphy Act.

Wireless telegraphy.

9. (1) The Commission may do, in Australia or elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to, the performance of its functions under this Act.

Powers of the Commission.

(2) The generality of sub-section (1) shall not be taken to be limited by any other provisions of this Act conferring a power on the Commission.

10. (1) The Commission has power, for or in connexion with the performance of its functions—

Particular powers of the Commission.

- (a) to purchase land;
- (b) to take land on lease;
- (c) to take easements over land;
- (d) to sell, or otherwise dispose of, land vested in the Commission but not required for the purposes of the Commission;
- (e) to lease land vested in the Commission the use of which is not for the time being required by the Commission;
- (f) to release any easement over land; and
- (g) to do anything incidental to any of the powers specified in the preceding paragraphs of this sub-section.

(2) The Commission may conduct investigations and research with a view to the development and improved efficiency of telecommunications services generally.

(3) Subject to the regulations, the Commission may provide, or authorize the provision of, services for, or by way of, the dissemination, by means of a telecommunications service provided by it, of information that is, in the opinion of the Commission, of utility to the public, to persons who seek that information.

(4) The Commission may deliver to the person to whom it is addressed a telecommunications message that has not been transmitted over any telecommunications system.

Charges for telecommunications services and other charges.

11. (1) The Commission may, from time to time, make, with the approval of the Minister, determinations fixing or varying—

- (a) the rentals payable in respect of standard telephone services provided by the Commission;
- (b) the charges for telephone calls made within Australia, other than charges for special services provided by the Commission in connexion with those calls; and
- (c) the charges for the transmission within Australia of telegrams that are lodged at telegraph offices otherwise than by means of a telecommunications service provided by the Commission.

(2) The Commission may, from time to time, make determinations fixing or varying rentals and charges, other than rentals and charges referred to in sub-section (1), for telecommunications services and other services that the Commission provides under this Act.

(3) An application to the Minister for his approval of a determination proposed to be made by the Commission under sub-section (1)—

- (a) shall be made to the Minister in writing;
- (b) shall specify the date as from which the determination is, if approved by the Minister, intended to operate; and
- (c) shall also specify—
 - (i) the proportion of the amount ascertained in accordance with the formula specified in paragraph 73 (1) (b) in respect of the financial year in which the date so specified occurs that the Commission is planning to provide out of revenues of the Commission for expenditure by way of capital expenditure; and
 - (ii) the amount estimated by the Commission to be the amount of revenue that the Commission will receive in respect of the financial year referred to in sub-paragraph (i),

if the determination is made and any other determination that the Commission proposes to make under sub-section (2) is also made.

(4) The Minister shall furnish his decision with respect to an application referred to in sub-section (3) to the Commission in writing.

(5) Where an application has been made to the Minister for approval of a determination that the Commission proposes to make under sub-section (1), the Minister may request the Commission, in writing, to furnish to him specified information that is, in his opinion, relevant to the fixing or varying of the rentals and charges to which the determination relates, and the Commission shall comply with the request to the extent to which it is practicable to do so and as soon as practicable after receipt of the request.

(6) The Commission shall cause particulars of rentals and charges determined by it under this section to be published in the *Gazette*.

(7) In this section, a reference to the rental payable in respect of a standard telephone service provided by the Commission is a reference to the rental payable for the use of the line and other apparatus connecting premises to the telephone system controlled by the Commission.

12. (1) This section applies to the Commission in respect of a financial year where—

Reimburse-
ment.

(a) the Commission has submitted to the Minister for his approval a determination that it proposes to make under sub-section 11 (1) with a view to fulfilling the financial policy that it is pursuing in respect of that financial year, but the Minister has refused to grant his approval; and

(b) subsequent to that refusal, the Commission—

(i) after having given consideration to any suggestions with respect to rentals and charges made by the Minister when refusing to approve the determination referred to in paragraph (a); and

(ii) after having reconsidered the proposed expenditures of the Commission, the proportion specified in the application for the Minister's approval in accordance with sub-paragraph 11 (3) (c) (i) and all rentals and charges referred to in section 11, with a view to formulating a financial policy in respect of that year and carrying out that policy otherwise than by charging the rentals and charges proposed in the determination referred to in paragraph (a),

has submitted to the Minister an application in accordance with sub-section 11 (3) for his approval of another determination (in this section referred to as the second determination), whether or not differing from the original proposed determination, that the

Commission proposes to make under sub-section 11 (1), but the Minister has refused to grant his approval.

(2) Where, after the end of a financial year in respect of which this section applies to the Commission, the Minister is satisfied that the Commission has complied with sub-section 73 (2) in respect of the year and that, for reasons related, either in whole or in part, to his having refused to approve under sub-section 11 (1) the second determination, the revenue that the Commission would have required in respect of the financial year for the purpose of enabling it—

- (a) to have met, out of that revenue, all expenditure, and provision for expenditure, of the Commission in respect of that year properly chargeable to the revenue; and
- (b) to have provided, for expenditure by the Commission by way of capital expenditure, a sum equal to the proportion specified in the application made to the Minister in respect of the second determination in pursuance of sub-paragraph 11 (3) (c) (i) of the amount ascertained in respect of that financial year in accordance with the formula specified in paragraph 73 (1) (b) or equal to one-half of the amount so ascertained, whichever is the less,

exceeds the revenue of the Commission in respect of that year, the Commission is entitled to be paid by Australia—

- (c) an amount equal to the excess;
- (d) an amount equal to the amount by which the revenue of the Commission in respect of that year was less than the amount specified in the application made to the Minister in respect of that second determination in pursuance of sub-paragraph 11 (3) (c) (ii); or
- (e) an amount equal to the amount by which the revenue of the Commission in respect of that year is less than the revenue that, in the opinion of the Minister, the Commission would have received in respect of that year if that second determination had been approved by the Minister and made by the Commission,

whichever is the least.

(3) Where the Minister, when refusing to approve the second determination in respect of a financial year, notifies the Commission the rentals and charges of a kind referred to in sub-section 11 (1) that he would be prepared to approve in respect of that year but the Commission does not make a determination under sub-section 11 (1) fixing or varying the rentals and charges accordingly, the Commission is not entitled to be paid an amount by Australia under sub-section (2) of this section in respect of that financial year.

(4) The Minister may, when notifying the Commission the rentals and charges that he would be prepared to approve in respect of a year,

specify any concessional rentals or charges that should, in his opinion, be provided for persons included in a specified class of persons.

(5) The Treasurer may, out of moneys appropriated by the Parliament for the purpose, make advances to the Commission, at such times as he thinks fit, of such amounts as he thinks fit on account of any amount that may become payable under sub-section (2).

(6) The Commission is liable to repay to Australia, upon demand by the Treasurer, the amount by which the total amounts (including advances) paid to the Commission under this section exceeds the total of those amounts that have become payable to the Commission under sub-section (2).

(7) The Commission shall cause particulars of any refusal by the Minister to approve a determination under sub-section 11 (1) to be set out in the report of the Commission under section 99 with respect to its operations during the year in which the approval was refused.

13. (1) The Commission—

- (a) may authorize a person to erect, maintain or operate a telecommunications installation other than an installation for the purpose of transmitting or receiving messages by means of wireless telegraphy; and
- (b) may authorize the attachment of a line, equipment or apparatus, including equipment or apparatus for the purpose of transmitting or receiving messages by means of wireless telegraphy, to a telecommunications system.

Commission may authorize persons to erect, maintain and operate telecommunications installations.

(2) The Commission may specify, in an authorization issued under sub-section (1), the period in respect of which, and the terms and conditions subject to which, the authorization is to operate.

14. The Commission may make arrangements with a Minister of State acting on behalf of Australia or the Administration of a Territory, with a Minister of a State acting on behalf of the State, or with an authority of Australia or of a State—

Commission may act as agent, &c.

- (a) for the doing of any act or thing by the Commission on behalf of Australia, the Administration of that Territory, that State or that authority, as the case may be, being an act or thing that can conveniently be done in conjunction with the performance of the functions of the Commission; or
- (b) for the doing by a Department of State, the Administration of that Territory, a Department of that State or that authority, as the case may be, on behalf of the Commission of any act or thing that the Commission is authorized to do under this Act.

**PART III—POWERS OF THE COMMISSION IN RELATION
TO LAND**

Power to enter lands and make surveys.

15. (1) The Commission may, for the purpose of ascertaining the suitability of any land, including land owned or occupied by Australia or a State, for carrying out the functions of the Commission—

- (a) enter upon, and inspect, the land; and
- (b) on land so entered, make surveys, take levels, sink bores, dig pits and examine the soil and do other acts necessary for that purpose.

(2) Before entering upon land in pursuance of sub-section (1), the Commission shall give notice in writing of its intention to do so to the owner and occupier of the land.

Power to construct telecommunications installations.

16. (1) In this section—

“telecommunications installation” means—

- (a) a line; or
- (b) any equipment, apparatus, tunnel, manhole, pit or pole used, or intended for use, in connexion with a telecommunications service; and

“land” includes land owned or occupied by Australia or a State.

(2) Subject to sub-sections (5) and (7), the Commission may, for the purposes of this Act—

- (a) construct a telecommunications installation above, upon or beneath the surface of any land or above or beneath the surface of any water; or
- (b) affix to any building or other structure erected on any land or in any waters, any line, or other equipment for use in connexion with the operation of a telecommunications service by the Commission.

(3) Without limiting the generality of sub-section (2) or of section 18, the Commission may, for purposes connected with the construction, replacement, repair, maintenance or renewal of a telecommunications installation—

- (a) enter upon, and occupy, any land; and
 - (b) on land so occupied, do any act specified in sub-section (4).
- (4) The acts referred to in sub-section (3) are—
- (a) to construct, build or place any plant, machinery, equipment or goods;
 - (b) to fell or lop trees and to clear and remove other vegetation or undergrowth;
 - (c) to make cuttings or excavations;
 - (d) to re-instate the surface of the land and, for purposes connected therewith, to remove and dispose of earth, soil or other material

or trees felled on, or parts of trees, vegetation or undergrowth cleared from, the land;

- (e) to erect temporary workshops, sheds or other buildings; and
- (f) to level the surface of land and make roads.

(5) The Commission shall not, in the exercise of its powers under sub-section (2)—

- (a) construct a telecommunications installation above, upon or beneath the surface of any road or bridge; or
- (b) affix to any structure erected on a road or bridge any line or other equipment for use in connexion with the operation of a telecommunications service,

unless the Commission has given notice, in writing, of its intention to do so to the authority having the care and management of that road or bridge.

(6) Where the Commission has, in order to exercise its powers under sub-section (2) on a road or bridge, given notice to the authority having the care and management of that road or bridge, the Commission may, in connexion with the exercise of those powers—

- (a) construct, build or place any plant, machinery, equipment or goods on that road or bridge;
- (b) make cuttings or excavations on that road or bridge; and
- (c) carry away surplus sand, clay, stone, earth, gravel, timber or other materials or things from that road or bridge.

(7) The Commission shall not, in the exercise of its powers under this section—

- (a) alter the position of a pipe, being a main, sewer or drain; or
- (b) alter the position of any other pipe for the supply of water or gas or a cable for the supply of electricity,

unless the Commission has given notice, in writing, of its intention to do so to the authority having the care and management of the pipe or cable.

(8) The Commission shall, in the exercise of its powers under sub-section (2), ensure that a line erected above the surface of a road, bridge, vehicular path or water is erected in such a manner as to allow for the reasonable passage of persons and vehicles on the road, bridge or path or of vessels over the water.

(9) The Commission may demolish or destroy on, or remove from, any land occupied by it, any plant, machinery, equipment, goods, workshop, shed, building or road constructed, built, placed or erected by it on the land.

(10) Subject to sub-sections (5) and (7), before the Commission exercises any of its powers under this section in relation to land, the Commission shall give notice in writing to the owner and occupier of the land

of its intention to enter upon the land and of the purpose for which it intends to enter upon the land.

(11) Sub-section (10) does not apply to the exercise, by the Commission, of any of its powers under this section on a road or bridge.

Trees may be cut or lopped.

17. (1) The Commission may, when any tree, undergrowth or vegetation growing on land owned or occupied by Australia or by a State or on any road obstructs, or is likely to obstruct, the operation of any telecommunications installation, after giving notice in writing to the authority having the care and management of the land or road concerned of its intention to do so, cut down or lop the tree or clear the undergrowth or vegetation.

(2) The Commission may, when any tree, undergrowth or vegetation growing on private property obstructs, or is likely to obstruct, the operation of any telecommunications installation, by notice in writing served upon the owner and occupier of that property, request him to cut down or lop the tree, or to clear and remove undergrowth or vegetation in the manner, and within the period, specified in the notice, and, upon default, the Commission may enter the property concerned and cut down or lop the tree, or clear and remove the undergrowth or vegetation, in the manner specified in the notice.

Commission may replace, repair and maintain installations, &c.

18. (1) The Commission may, at any time, remove, replace, repair or maintain—

- (a) any telecommunications installation constructed above, upon or beneath the surface of any land or above or beneath the surface of any waters; or
- (b) any line, or other equipment affixed to any building or other structure erected on any land or in any waters, being a line or equipment for use in connexion with a telecommunications service,

and for that purpose may enter upon, and occupy, that land or those waters and may remove, or erect a gate in, any fence hindering the exercise of those powers.

(2) Before removing, or erecting a gate in, a fence in pursuance of sub-section (1), the Commission shall take all reasonable steps to notify, in writing, the owner and occupier of land on which, or on the boundary of which, the fence is erected.

19. Where, subsequent to the exercise by the Commission of its powers under section 16 to construct a telecommunications installation on any land or to affix any telecommunications installation to any building or other structure on any land, it becomes necessary, in the opinion of the Commission, by reason of a subdivision of that land, to remove, or alter the position of, any installations, the Commission may enter the land and do work for that purpose and the person who subdivided the land is liable to pay to the Commission the reasonable cost of work done by the Commission for that purpose, and that amount may be recovered as a debt due to the Commission in a court of competent jurisdiction.

Subdivider to pay cost of necessary alterations.

20. (1) In the exercise of a power conferred upon the Commission under this Act, the Commission, an officer or employee of the Commission, a person acting for or on behalf of the Commission under a contract or the employee of such a person shall cause as little detriment and inconvenience and do as little damage as possible.

Commission to do as little damage as possible and to pay compensation.

(2) Where the owner of land is injuriously affected by the exercise, in relation to that land, of any of the powers conferred by this Part, compensation shall be paid by the Commission.

(3) Where land is entered or occupied in pursuance of this Part, the Commission is liable to pay compensation to the owner or occupier of the land, or both, as the case requires, and the compensation so payable shall include compensation in respect of damage of a temporary character as well as damage of a permanent character.

(4) Nothing in this section shall be construed as excluding or limiting any liability of the Commission apart from this section in respect of a matter in relation to which compensation is not payable under this section.

(5) The amount of compensation payable to a person under this section shall be determined by agreement between the person and the Commission and in the absence of agreement shall be determined by arbitration in accordance with the law of the State or Territory in which the claim arises relating to the settlement of commercial disputes by arbitration.

PART IV—CONSTITUTION AND MEETINGS OF THE COMMISSION

21. (1) The Commission—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

Constitution of Commission.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

(3) The Commission is not subject to any requirement, obligation, liability, penalty or disability under a law of a State or Territory to which Australia is not subject.

Composition
of
Commission.

22. (1) The Commission shall consist of 7 Commissioners, namely—

- (a) the Managing Director;
- (b) 1 Commissioner, who shall be an officer of the Department administered by the Minister administering this Act;
- (c) 1 Commissioner to represent officers and employees of the Commission; and
- (d) 4 other Commissioners.

(2) The Commissioners shall be appointed by the Governor-General, the Managing Director being appointed as a full-time Commissioner and the other Commissioners being appointed as part-time Commissioners.

(3) The Governor-General shall, in appointing a Commissioner referred to in paragraph (1) (c), have regard to any advice with respect to the person to be appointed furnished by the Minister, after he has consulted with representatives of appropriate organizations representing officers and employees.

(4) The performance of the functions and the exercise of the powers of the Commission are not affected by reason of a vacancy or vacancies in the membership of the Commission.

(5) The By-laws may make provision for and in relation to the preservation of such rights as are specified in the By-laws by an officer who is appointed to be the Managing Director and for and in relation to the appointment of such an officer to a position in the Service upon the termination of his appointment under this section otherwise than upon the ground of his misconduct or of his having attained the age for retirement from the Service.

Period of
appoint-
ment.

23. (1) Subject to sub-section (2), a Commissioner shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) The Commissioner referred to in paragraph 22 (1) (b) holds office during the pleasure of the Governor-General.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Managing Director and a person shall not be appointed or re-appointed as the Managing Director for a period that extends beyond the date at which he will attain the age of 65 years.

24. (1) A Commissioner other than the Commissioner referred to in paragraph 22 (1) (b) shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed by the regulations. Remuneration and allowances.

(2) A Commissioner shall be paid such allowances as are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

25. (1) The Governor-General shall appoint a Commissioner to be the Chairman of the Commission and another Commissioner to be the Deputy Chairman of the Commission. Chairman and Deputy Chairman of Commission.

(2) The Commissioner appointed to be Chairman or Deputy Chairman holds office as Chairman or Deputy Chairman until the expiration of his term of office as a Commissioner that is current or commences at the time of his appointment, but ceases to be Chairman or Deputy Chairman if he ceases to be a Commissioner or resigns his office of Chairman or Deputy Chairman in accordance with sub-section (3).

(3) The Commissioner appointed to be Chairman or Deputy Chairman may resign his office of Chairman or Deputy Chairman by writing under his hand delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

(4) A person is eligible to be re-appointed as the Chairman or Deputy Chairman.

26. The Minister may grant leave of absence to a Commissioner upon such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence.

27. A Commissioner may resign his office by writing under his hand delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General. Resignation of Commissioner.

28. (1) The Governor-General may terminate the appointment of a Commissioner other than the Commissioner referred to in paragraph 22 (1) (b) by reason of the misbehaviour, or the physical or mental incapacity, of the Commissioner. Termination of appointments.

(2) If a Commissioner other than the Commissioner referred to in paragraph 22 (1) (b)—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) fails to comply with his obligations under sub-section (3);

- (c) being the Managing Director—
 - (i) engages in paid employment outside the duties of his office without the approval of the Minister; or
 - (ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months; or
- (d) being a part-time Commissioner—is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Commission,

the Governor-General shall terminate the appointment of the Commissioner.

(3) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, otherwise than as a member, and in common with other members, of an incorporated company which consists of not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(4) A disclosure under sub-section (3) shall be recorded in the minutes of the Commission, and the Commissioner—

- (a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to the matter; and
- (b) shall be disregarded for the purposes of constituting a quorum of the Commission for any such deliberation or decision.

(5) Sub-section (3) does not apply in relation to a matter relating to the provision of a telecommunications service by the Commission for the Commissioner.

Acting Commissioners.

29. (1) Where the Managing Director is, or is expected to be, absent from duty or from Australia or there is, or is expected to be, a vacancy in the office of Managing Director, the Minister may appoint a person to act as the Managing Director during the absence or vacancy.

(2) A person appointed to act as the Managing Director in the event of a vacancy shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) Where a part-time Commissioner is appointed to act as the Managing Director, the office of the part-time Commissioner shall, for the purposes of sub-section (4), be deemed to be vacant.

(4) Where a part-time Commissioner is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Commission or there is a vacancy in the office of a part-time Commissioner, the Minister may appoint a person to act as a part-time Commissioner during that inability, or until the filling of the vacancy.

(5) The Minister shall not appoint a person to be an acting Commissioner in place of a Commissioner referred to in paragraph 22 (1) (b) or (c), or to fill a vacancy in the office of such a Commissioner, unless the person would be eligible to be appointed to the office held or formerly held by that Commissioner.

(6) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(7) A person appointed under this section to act as the Managing Director or as a part-time Commissioner has all the powers and functions of the Managing Director, or of a part-time Commissioner, as the case may be.

(8) The validity of a decision of the Commission shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment of a person under this section had ceased to have effect.

30. (1) Where the Chairman is absent from duty or from Australia or there is a vacancy in the office of Chairman, the Deputy Chairman shall act as the Chairman during the absence or until the filling of the vacancy. Acting
Chairman
and Deputy
Chairman.

(2) Where the Deputy Chairman is, or is expected to be, absent from duty or from Australia or there is, or is expected to be, a vacancy in the office of Deputy Chairman, the Minister may appoint another Commissioner to act as the Deputy Chairman during the period of the absence or until the filling of the vacancy.

(3) If the Deputy Chairman is at any time acting as the Chairman, his office of Deputy Chairman shall, during the period of his so acting, be deemed, for the purposes of sub-section (2), to be vacant.

(4) A reference in sub-section (1) to the Deputy Chairman includes a reference to a Commissioner acting as the Deputy Chairman in pursuance of an appointment under sub-section (2).

31. (1) The Chairman shall convene such meetings of the Commission as he considers necessary for the performance of its functions. Meetings of
the
Commission.

(2) The Chairman shall, when requested by 4 or more Commissioners to do so, convene a meeting of the Commission.

(3) The Chairman shall preside at all meetings of the Commission at which he is present.

(4) If, at a meeting of the Commission, the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman shall preside at the meeting.

(5) If, at a meeting of the Commission, neither the Chairman nor Deputy Chairman is present, the Commissioners present shall appoint one of their number to preside at the meeting:

(6) A quorum at a meeting of the Commission is 4 Commissioners.

(7) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

(8) The Commissioner presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) A reference in this section to the Chairman or the Deputy Chairman includes a reference to a person acting as the Chairman or as the Deputy Chairman, as the case may be.

Duties of the
Managing
Director.

32. (1) The affairs of the Commission, to the extent determined by the Commission, shall be managed by the Managing Director.

(2) The Managing Director shall, in managing any of the affairs of the Commission, act in accordance with the policy of, and any directions given by, the Commission.

Delegation.

33. (1) The Commission may, by instrument under its seal, delegate to a Commissioner, to the Chief General Manager or to an officer or employee, either generally or otherwise as provided by the instrument of delegation, all or any of its powers under this Act (except this power of delegation).

(2) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Commission.

PART V—THE STAFF OF THE COMMISSION

Division 1—The Chief General Manager

Chief
General
Manager.

34. (1) There shall be a Chief General Manager of the Commission, who shall be appointed by the Governor-General.

(2) The Chief General Manager shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as Chief General Manager and a person shall

not be appointed or re-appointed as Chief General Manager for a period that extends beyond the date at which he will attain the age of 65 years.

(4) The Chief General Manager may resign his office by writing under his hand delivered to the Governor-General but the resignation does not have effect until it is accepted by the Governor-General.

(5) The Governor-General may terminate the appointment of the Chief General Manager by reason of the misbehaviour, or physical or mental incapacity, of the Chief General Manager.

(6) If the Chief General Manager—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Governor-General shall terminate his appointment.

(7) The Minister may grant leave of absence to the Chief General Manager upon such terms and conditions as to remuneration or otherwise as the Minister determines.

(8) The By-laws may make provision for and in relation to the preservation of such rights as are specified in the By-laws by an officer who is appointed to be Chief General Manager and for and in relation to the appointment of such an officer to a position in the Service upon the termination of his appointment under this section otherwise than upon the ground of his misconduct or of his having attained the age for retirement from the Service.

35. (1) The Chief General Manager shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed by the regulations. Remuneration of Chief General Manager.

(2) The Chief General Manager shall be paid such allowances as are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

Acting Chief
General
Manager.

36. (1) Where the Chief General Manager is, or is expected to be, absent from duty or from Australia or has been appointed to act as the Managing Director, or there is, or is expected to be, a vacancy in the office of Chief General Manager, the Minister may appoint a person to act as the Chief General Manager during the absence, while the Chief General Manager continues to act as the Managing Director or until the filling of the vacancy, as the case may be.

(2) A person appointed to act as the Chief General Manager in the event of a vacancy shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) The Minister may—

(a) determine the terms and conditions of appointment of a person appointed under this section; and

(b) at any time terminate such an appointment.

(4) Sub-sections 34 (4) and (7) apply in relation to a person appointed to act as the Chief General Manager in like manner as they apply in relation to the Chief General Manager.

(5) While the appointment of a person to act as the Chief General Manager is in force, he has, and may exercise and perform, all the powers and functions of the Chief General Manager.

(6) The validity of anything done by a person appointed to act as the Chief General Manager shall not be called into question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

Duties of
Chief
General
Manager.

37. (1) The Chief General Manager shall perform such duties as the Managing Director directs and, in the event of the absence or inability of the Managing Director and of the person appointed to act as the Managing Director (if any), or of a vacancy in the office of Managing Director, shall perform the duties of the Managing Director otherwise than at meetings of the Commission.

(2) For the purposes of sub-section (1), the office of Managing Director shall not be taken to be vacant while a person appointed to act as the Managing Director is performing the duties of the office.

(3) The Chief General Manager shall, in the performance of his duties, act in accordance with the policy of, and any directions given by, the Commission or the Managing Director.

*Division 2—Establishment of the Australian Telecommunications
Commission Service*

- 38.** (1) For the purpose of enabling the Commission to perform its functions under this Act, there is hereby established an Australian Telecommunications Commission Service. Establishment of Australian Telecommunications Commission Service.
- (2) The Service consists of the persons appointed as officers or employed as temporary employees in accordance with this Part and of persons deemed to be appointed as officers under section 16 of the Transitional Provisions Act.

Division 3—Officers and Employees

- 39.** (1) The Commission may appoint as officers such number of persons as it thinks necessary for the purposes of this Act. Officers.
- (2) A person shall not be appointed as an officer unless—
- (a) the Commission is satisfied, after he has undergone a medical examination required by the Commission, as to his health and physical fitness;
 - (b) he possesses such educational qualifications, or meets such other requirements (if any), as are determined by the Commission; and
 - (c) the Commission is satisfied that he is a fit and proper person to be an officer.
- (3) The Commission shall determine—
- (a) the manner in which applications for appointment as officers are to be sought; and
 - (b) the manner of ascertaining the order in which offers of appointment will be made to persons who apply for appointment as officers to specified positions or to positions included in a specified class of positions.
- (4) The Commission may, from time to time, for the purpose of this section—
- (a) hold such examinations as it thinks fit;
 - (b) determine conditions of entry for any such examination; and
 - (c) appoint examiners for the purpose of any such examination.
- (5) Officers shall perform duties as directed by the Commission or the Managing Director.

- 40.** (1) Unless the Commission, in a particular case, otherwise directs, the appointment of every officer shall be on probation for a period of 6 months commencing on the day on which the officer commences duties in pursuance of his appointment. Appointments to be on probation.

(2) A person appointed as an officer on probation remains a probationer until his appointment is confirmed or terminated in accordance with this section.

(3) The Commission may, at any time during the period of 6 months, terminate the appointment.

(4) As soon as practicable after the expiration of the period of 6 months, the Commission shall—

- (a) confirm the appointment;
- (b) terminate the appointment; or
- (c) direct that the probationer continue on probation for such further period (not being a period exceeding 6 months) as the Commission determines.

(5) Where the Commission directs that a probationer continue on probation for a further period, the Commission may confirm or terminate the appointment of the probationer at any time during that further period and, if it does not confirm or terminate the appointment before the expiration of that period, shall do so as soon as practicable after the expiration of that period.

(6) Where the appointment of a probationer is to be terminated, the Commission shall notify the probationer in writing of the reasons for the termination of the probation.

Re-
appointment
of persons
who have
resigned
from the
Service to
become
candidates at
elections.

41. (1) Where the Commission is satisfied that—

- (a) a person who was an officer—
 - (i) resigned from the Service in order to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly for the Northern Territory or a legislative or advisory body for another Territory prescribed by the regulations;
 - (ii) was a candidate at the election; and
 - (iii) failed to be elected; and
- (b) the resignation took effect not earlier than 1 month before the date on which nominations for the election closed,

the Commission shall, upon application by that person within 2 months after the declaration of the result of the election, re-appoint him to the Service at a classification and salary equivalent to the classification and salary that he had immediately before the date upon which his resignation took effect.

(2) A person shall be re-appointed under this section without being required to undergo any medical examination and whether or not he possesses the appropriate educational qualifications or meets the appropriate requirements.

(3) A person shall be re-appointed under this section without probation.

(4) A person re-appointed under this section shall be deemed to have continued in the Service as if he had not resigned but had been on leave of absence without pay during the period from the day on which his resignation became effective to and including the day immediately preceding the day on which he was re-appointed.

(5) The period referred to in sub-section (4) shall, for all purposes, be deemed to form part of the officer's period of service.

42. (1) The Commission may engage persons as temporary employees.

(2) Persons engaged as temporary employees shall perform duties as directed by the Commission or the Managing Director.

(3) Where the Commission is satisfied that—

(a) a person who was temporarily employed by the Commission—

(i) resigned from that employment in order to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly for the Northern Territory or of a legislative or advisory body for another Territory prescribed by the regulations;

(ii) was a candidate at the election; and

(iii) failed to be elected; and

(b) the resignation took effect not earlier than 1 month before the date on which nominations for the election closed,

the Commission shall, upon application by that person within 2 months after the declaration of the result of the election, employ him at a classification and rate of pay equivalent to the classification and rate of pay that he had immediately before the date upon which his resignation took effect.

(4) A person employed under sub-section (3) shall be deemed to have continued in temporary employment in the Service as if the period of his employment in pursuance of this section and the unbroken period of his employment immediately prior to the date on which his resignation took effect were a continuous period of temporary employment.

43. (1) Subject to this Part, officers and employees hold office on such respective terms and conditions as the Commission determines. Terms and conditions of employment.

(2) Where, immediately before the commencing date—

(a) an award of the Conciliation and Arbitration Commission;

(b) a determination made by the Public Service Arbitrator;

(c) a determination of the Public Service Board in force under the *Public Service Act 1922-1975*; or

- (d) an agreement to which section 31 of the *Conciliation and Arbitration Act 1904-1974* applied,

applied to or in relation to the persons, whether officers or employees, who performed the duties of offices included in a class of offices in the Postmaster-General's Department, the Commission shall, in making its first determination of the terms and conditions of employment of the persons, whether officers or employees, performing the duties of positions included in the corresponding class of positions in the Australian Telecommunications Commission Service, determine terms and conditions no less favourable to those last-mentioned persons than the terms and conditions that were applicable to those first-mentioned persons immediately before the commencing date by virtue of that award, determination or agreement.

Division 4—Classifications, Appointments and Promotions

Creation and abolition of positions.

44. (1) The Commission may create positions in the Service and may abolish positions in the Service.

(2) The Commission may determine the salary, or the range of salary, applicable to a position in the Service.

Commission may alter designation or classification of positions.

45. (1) The Commission may, from time to time, alter the designation of a position or alter the classification of a position in the Service by raising or lowering the salary, or range of salary, applicable to the position.

(2) Whenever the classification of a position is altered, the position shall be deemed to be vacant.

(3) Where the Commission makes the same alteration of the classification of all positions having the same classification and designation, the Commission may direct that sub-section (2) shall not apply and, in that case, that sub-section does not apply.

(4) Where—

(a) the Commission makes an alteration of the classification of a position in a case where there is no other position having the same classification and designation as that position; and

(b) the Commission determines that that alteration is related to an alteration in respect of which a direction has been given under sub-section (3),

the Commission may direct that sub-section (2) shall not apply in relation to that first-mentioned alteration and, in that case, that sub-section does not apply.

(5) A direction given by the Commission under sub-section (3) or (4) shall be made known to officers as prescribed by the By-laws.

46. The Commission may appoint a person as an officer, or transfer or promote an officer, to fill a vacant position in the Service.

Filling of vacant positions.

47. (1) Subject to sub-section (2), in the selection of an officer for promotion to a vacant position, consideration shall be given to the relative efficiency of the officers available for promotion and, in the event of equality of efficiency of 2 or more officers, then to the relative seniority of those officers.

Selection of officers for promotion.

(2) The Commission may determine that, in the selection of an officer for promotion to a specified position, or of officers for promotion to vacant positions included in a specified class of positions, the selection shall be made on the basis of selecting for promotion the senior efficient officer available for promotion.

(3) For the purposes of this section—

- (a) “efficiency” means, subject to sub-section (4), special qualifications and aptitude for the discharge of the duties of the kind to be performed by the officer filling the position, together with merit and diligence and good conduct and, in the case of an officer who has at any time been engaged on war service, includes such efficiency as, in the opinion of the Commission, the officer would have attained but for his absence on war service;
- (b) “war service” includes “Defence service” as defined by sub-section 6 (1) of the *Defence (Re-establishment) Act 1965–1973*; and
- (c) the seniority of officers shall be determined as prescribed by the By-laws.

(4) Where, by virtue of a determination of the Commission, this sub-section applies in relation to a position, consideration shall also be given, in assessing the efficiency of an officer, to the special qualifications and aptitude of each officer available for promotion for the discharge of the duties of higher positions in the Service.

48. (1) The Commission may determine that a person shall not be appointed, or that an officer shall not be transferred or promoted, to a specified position, or to a position included in a specified class of positions, unless the person or officer possesses such qualifications, and complies with such conditions, as are specified in the determination.

Qualification for particular positions.

(2) A qualification or condition specified in a determination in accordance with sub-section (1) may be a qualification or condition that is defined or expressed by reference to the opinion of the Commission in relation to a particular matter.

(3) The Commission may, for the purposes of sub-section (1)—

- (a) hold, or authorize the holding of, such courses of training, and such examinations, as it thinks fit;

- (b) determine conditions of entry for any such course of training or any such examination; and
- (c) appoint instructors for the purposes of any such course of training and examiners for the purposes of any such examination.

(4) Notice of a determination made under sub-section (1) shall be published in the *Gazette* or in such other publication as is prescribed by the By-laws, and the notice shall specify—

- (a) the subjects of the examination;
- (b) the scope of, or syllabus for, the course of training for each of the subjects of the examination; and
- (c) the subjects required to be passed at the examination.

Transfers
and
promotions
to certain
positions.

49. (1) Where the Commission has determined that an officer shall not be transferred or promoted to a specified position or a position included in a specified class of positions unless the officer has passed an examination held or authorized by the Commission for transfer or promotion to that position, the Commission may also determine—

- (a) that the transfer or promotion of officers to such a position shall be made only in accordance with this section; and
- (b) that officers who submit themselves for such an examination in a specified part of Australia shall, on passing the examination, be eligible for transfer or promotion under this section only to a vacant position located in that part of Australia.

(2) Where an officer passes an examination held or authorized by the Commission for transfer or promotion to a particular position, or to a position included in a particular class of positions, the officer shall be transferred, or promoted to, such a position—

- (a) if the Commission has made the determination referred to in paragraph (1) (b) in relation to the examination—as soon as practicable after a vacancy occurs in such a position that is located in the part of Australia in which the officer submitted himself for the examination; or
- (b) in any other case—as soon as practicable after a vacancy occurs in such a position.

(3) Where 2 or more officers have passed the same examination, those officers are entitled to be transferred or promoted in accordance with sub-section (2) according to the order of merit in which they passed the examination.

(4) A promotion under this section is not subject to the right of appeal provided in section 51.

50. (1) The Commission may determine that—

- (a) a specified position is a position the occupant of which is required to undergo a course of training for the purpose of enabling him to perform duties which require professional, technical or other knowledge; and
- (b) an officer who has completed that course of training to the satisfaction of the Commission is entitled to be promoted in accordance with this section to such position as is specified in the determination in relation to that first-mentioned position.

Promotion of officers who complete courses of training for special positions.

(2) An officer who has completed, to the satisfaction of the Commission, a course of training approved by the Commission, shall be promoted to the position specified by the Commission under paragraph (1) (b) as soon as practicable after a vacancy occurs in that position.

(3) Where 2 or more officers complete at the same time a course of training approved by the Commission, the promotion of those officers under sub-section (2) shall be made in accordance with the respective seniority of the officers.

(4) Until an officer who is entitled to promotion under sub-section (2) is promoted, the officer—

- (a) is an unattached officer having the designation appropriate to an officer occupying the position to which he is entitled to be promoted; and
- (b) shall, for the purposes of salary and of transfer to another position, be deemed to be the occupant of the position referred to in paragraph (a).

(5) A promotion under sub-section (2) is not subject to the right of appeal provided in section 51.

(6) A determination under sub-section (1) shall be made known to officers as prescribed by the By-laws.

(7) A reference in this section to a position shall, unless the contrary intention appears, be read as a reference to any position in a class of positions equivalent to that position.

51. (1) The promotion of an officer to a vacant position—

- (a) is provisional and without increased salary pending confirmation of the promotion;
- (b) shall be made known to officers in a manner prescribed by the By-laws; and
- (c) is subject to appeal as provided by this section.

Appeals against promotions.

(2) An officer who considers that he should have been promoted to a vacant position in preference to the officer provisionally promoted may appeal, in the manner specified in the regulations, against the provisional promotion—

- (a) on the ground of superior efficiency or of equal efficiency and seniority; or
- (b) if sub-section 47 (2) applies in relation to the position—on the ground that he is senior to the officer provisionally promoted and is efficient.

(3) The Commission may regard an appeal as having been made under this Act on a ground specified in sub-section (2) by an officer who, at any time within the time prescribed by the regulations for lodging an appeal, is absent from Australia on official duty or is absent from duty in circumstances prescribed by the regulations and in such a case this section has effect as if an appeal on that ground had been received from that officer and as if that officer had been, at the date of the appeal, performing his duties in the State or Territory in which, immediately before his departure from Australia on official duty or his absence from duty in circumstances prescribed by the regulations, as the case may be, he was performing his duties.

(4) Upon an appeal or appeals being made against a provisional promotion, a Promotions Appeal Board shall make a full inquiry into the claims of the appellant or appellants and the claims of the officer provisionally promoted and determine the appeal or appeals.

(5) The regulations may make provision for and in relation to the conduct of inquiries by Promotions Appeal Boards, including provisions for a Promotions Appeal Board to act as a Central Promotions Appeal Board to determine an appeal, in a case where all the parties to the appeal do not perform their duties in the same State or Territory, after examining reports made to it by 2 or more other Promotions Appeal Boards and making such further inquiries (if any) as it thinks necessary into the claims of all the parties to the appeal.

(6) Where an appeal is allowed, the Commission shall cancel the provisional promotion and promote the appellant to the vacant position.

(7) Where there are 2 or more appellants in respect of the one promotion, the Promotions Appeal Board determining the appeals shall, if it considers that 2 or more appellants have established the grounds of their appeals, allow the appeal of 1 only of those appellants, being the appellant whom it considers to have the best claim to promotion to the vacant position having regard to the provisions of sub-section 47 (1), or sub-section 47 (2), whichever is applicable in relation to the position.

(8) Where, in respect of a provisional promotion, no appeal is duly made or an appeal has, or appeals have, been duly made but the appeal or each of the appeals has been disallowed or has become inoperative, the Commission shall confirm the provisional promotion.

(9) If, after notification has been made of a provisional promotion to a vacant position but before the promotion has been confirmed, the Commission is satisfied that the position is unnecessary or could be filled

by the transfer of an excess officer, or that the notification or further notification of the vacancy in the position is desirable, the Commission may cancel the provisional promotion.

(10) The Commission may cancel a provisional promotion in accordance with sub-section (9) whether or not there has been an appeal against the provisional promotion, and, where the Commission so cancels a provisional promotion, any appeals in respect of the promotion shall be discontinued.

(11) For the purposes of this section, an appeal shall be taken to become inoperative if—

- (a) the appeal is withdrawn;
- (b) the appellant ceases to be an officer; or
- (c) the appellant ceases, by reason of the confirmation of his promotion to another position or for any other reason, to be eligible for promotion to the position concerned.

52. (1) For the purposes of this Division, the Minister may appoint a person to be the Chairman of a Promotions Appeal Board.

Chairman of
Promotions
Appeal
Boards.

(2) A person may be appointed under sub-section (1) as a full-time Chairman of a Promotions Appeal Board or as a part-time Chairman of a Promotions Appeal Board.

(3) A Chairman of a Promotions Appeal Board shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed by the regulations.

(4) The Chairman of a Promotions Appeal Board shall be paid such allowances as are prescribed by the regulations.

(5) Sub-sections (3) and (4) have effect subject to the *Remuneration Tribunals Act 1973-1974*.

(6) Subject to sub-sections (3) and (4), the Chairman of a Promotions Appeal Board holds office for such period, and upon such terms and conditions, as the Minister determines.

(7) A person holding office or appointed—

- (a) as Chairman of a Promotions Appeal Committee under the *Public Service Act 1922-1975*; or
- (b) as Chairman of a Promotions Appeal Board under the *Postal Services Act 1975*,

may be appointed under this sub-section as a part-time Chairman of a Promotions Appeal Board under this Act while retaining that first-mentioned office and, in that event—

- (c) he shall not be appointed for a period that extends beyond the date upon which his appointment to that first-mentioned office expires;
- (d) he shall perform his duties as Chairman of a Promotions Appeal Board under this Act concurrently with the performance of the duties of that first-mentioned office;
- (e) he shall cease to hold office as Chairman of a Promotions Appeal Board under this Act if he ceases to hold that first-mentioned office; and
- (f) he shall not be paid remuneration or allowances in his capacity as Chairman of a Promotions Appeal Board under this Act, but, for the purposes of the payment of remuneration and allowances to him, his duties as the holder of that first-mentioned office shall be deemed to include his duties as Chairman of the Promotions Appeal Board under this Act.

(8) The By-laws may make provision for and in relation to the preservation of such rights as are specified in the By-laws by an officer who is appointed to be the full-time Chairman of a Promotions Appeal Board under this Act and for and in relation to the appointment of such an officer to a position in the Service upon the termination of his appointment under this section otherwise than upon the ground of his misconduct or of his having attained the age for retirement from the Service.

Promotions
Appeal
Boards.

53. (1) For the purposes of this Division, the Commission shall, from time to time, arrange for the establishment of such Promotions Appeal Boards as are required.

(2) A Promotions Appeal Board, in relation to an appeal against a provisional promotion to a vacant position, shall be constituted by—

- (a) a Chairman, being a person who holds an office of Chairman of a Promotions Appeal Board;
- (b) an officer nominated by the Commission for the purposes of the appeal; and
- (c) an officer nominated by the organization that is, by virtue of the regulations, the appropriate organization in respect of the appeal.

(3) An officer shall not be nominated as a member of a Promotions Appeal Board in relation to a provisional promotion to a vacant position if that officer has himself been provisionally promoted to the vacant position or has himself appealed against the provisional promotion to that vacant position.

(4) Where, at a meeting of a Promotions Appeal Board, the members are divided on a question, that question shall be decided according to the decision of the majority.

Division 5—Tenure of Office

54. (1) An officer who has attained the age of 60 years is entitled to retire from the Service if the officer desires to do so, but may, subject to this Part, continue in the Service until he attains the age of 65 years. Tenure of office.

(2) An officer who attains the age of 65 years ceases to be an officer.

55. (1) If, at any time, the Commission finds that a greater number of officers occupying positions of a particular classification is employed than is necessary for the efficient working of the Service, an officer whom the Commission finds to be in excess may be transferred to such other position of equal classification as the officer is competent to fill, and, if no such position is available, the officer may be transferred to a position of lower classification. Excess officers.

(2) If no position is available for the officer, the Commission may retire him from the Service.

(3) The regulations shall make provision for and in relation to the review of a decision of the Commission under this section upon application by an officer affected by it.

56. (1) If an officer appears to the Commission to be inefficient or incompetent, or unable to discharge or incapable of discharging the duties of his position, the Commission may— Retirement, &c., on ground of inefficiency, incapacity, &c.

- (a) transfer him to another position having the same classification as the position held (whether in the same or a different locality);
- (b) reduce him to a lower position and salary; or
- (c) retire him from the Service.

(2) The regulations shall make provision for and in relation to the review of a decision of the Commission under this section upon application by an officer affected by it.

Division 6—Dismissals and Punishments

57. (1) In this Division, unless the contrary intention appears, “salary” does not include such allowances as are prescribed by the By-laws. Definitions.

(2) In this Division, a reference to misconduct, in relation to an officer, is a reference to a failure of the officer to fulfil his duty as an officer.

58. (1) For the purposes of this Division, an officer shall be taken to have failed to fulfil his duty as an officer if and only if— Disciplinary action.

- (a) he wilfully disobeys or wilfully disregards a direction given to him as an officer and given by a person having authority to give the direction;

- (b) he is inefficient or incompetent by reason of causes within his own control;
- (c) he is negligent or careless in the discharge of his duties;
- (d) he is guilty of improper conduct as an officer;
- (e) he is guilty of improper conduct otherwise than as an officer, being conduct that affects adversely the performance of his duties, is prejudicial to the interests of the Commission or damaging to the business of the Commission;
- (f) he contravenes or fails to comply with a provision of this Act, of the regulations or of the By-laws, that is applicable to him or with the terms and conditions upon which he is employed; or
- (g) he has, whether before or after becoming an officer, wilfully supplied to the Commission, to an officer or to some other person acting on behalf of the Commission incorrect or misleading information in connexion with his appointment to the Service.

(2) If a supervisor of an officer has, at any time, reason to believe that the officer may have failed to fulfil his duty as an officer, the supervisor may require the officer to furnish to the supervisor, in writing, an explanation of the matters alleged to constitute the failure and may, after consideration of any explanation furnished by the officer, if he is of the opinion that the officer has failed to fulfil his duty as an officer—

- (a) counsel the officer; or
- (b) furnish a report concerning the matters together with any explanation furnished to him in relation to those matters to an officer authorized for the purposes of sub-section (3).

(3) Where an officer authorized by the Commission for the purposes of this sub-section is of the opinion, whether by reason of his consideration of a report furnished under sub-section (2) or otherwise, that an officer may have failed to fulfil his duty as an officer the authorized officer shall, as soon as practicable, decide whether he should be charged and—

- (a) if he decides that the officer should not be charged—may counsel the officer or cause a supervisor of the officer to counsel the officer; or
- (b) if he decides that the officer should be charged—by writing under his hand delivered to the officer, charge the officer with the failure.

(4) Where an officer charged under sub-section (3) so requests, a copy of the charge shall be furnished to the organization to which the officer belongs.

(5) Where an officer is charged with misconduct, an officer authorized by the Commission for the purposes of this sub-section, not being either the supervisor of the officer charged or an officer authorized

for the purposes of sub-section (3), shall, without undue delay, hold an inquiry into the charge.

(6) In an inquiry for the purposes of sub-section (5), a formal hearing is not required, but the officer shall be notified that an inquiry is to be held into the alleged misconduct and given the opportunity to state, in writing, within 7 days or such longer period as the officer holding the inquiry may allow after that notice is furnished to him, whether he admits or denies the truth of the matters alleged to constitute the misconduct and to furnish a statement in relation to those matters.

(7) Where an officer has furnished a statement in relation to the matters alleged to constitute misconduct, the officer shall, if he so requests, be given the opportunity of making a further oral statement to the officer holding the inquiry and, if he does so, a written record of his further statement shall be made by that officer.

(8) An officer charged with misconduct shall not be taken, by reason only of having failed to deny the truth of a matter alleged to constitute the misconduct, to have admitted the truth of that matter.

(9) Where the officer who held an inquiry into a charge is satisfied that the officer charged has failed to fulfil his duty as an officer, he may counsel the officer or cause a supervisor of the officer to counsel him, or, if he is of the opinion that other action is necessary—

- (a) admonish the officer;
- (b) direct that a sum not exceeding \$40 be deducted from the salary of the officer;
- (c) if the officer occupies a position to which a range of salary is applicable and is in receipt of a salary other than the minimum salary of that range—direct that his salary be reduced to a lower salary within that range for a period not exceeding 12 months; or
- (d) recommend to the Commission, in writing—
 - (i) that the Commission transfer the officer to another position, whether at the same or a different locality, being a position for which he is qualified and which has the same classification as the position held by the officer, and the salary, within the salary range of the position, that should be paid to the officer;
 - (ii) that the Commission transfer the officer to another position, whether at the same or a different locality, being a position for which he is qualified and which has a lower classification than the position held by the officer, and the salary, within the salary range of the position, that should be paid to the officer; or
 - (iii) that the Commission dismiss the officer from the Service.

(10) Where an officer makes a recommendation specified in paragraph (9) (d) in respect of an officer, he shall furnish to the Commission, with his recommendation, full particulars of his findings in relation to the facts giving rise to the misconduct.

(11) Where an officer makes a recommendation specified in paragraph (9) (d) in respect of an officer, the Commission may, after consideration of the particulars furnished under sub-section (10) counsel the officer, or, if it considers that other action is necessary—

- (a) admonish the officer;
- (b) decide—
 - (i) to give effect to the recommendation; or
 - (ii) to take any other action that could have been recommended under that paragraph; or
- (c) give a direction referred to in paragraph (9) (b) or (c).

(12) Where an officer recommends, or the Commission decides, that an officer be transferred to a position having the same classification as the position previously held by him and that he be paid a salary that is the equivalent of the salary previously paid to him, the officer may also recommend, or the Commission may also direct, as the case may be, that a sum not exceeding \$40 be deducted from the officer's salary.

(13) Where the Commission or an officer authorized for the purposes of sub-section (5) reduces the salary of an officer, the officer is entitled, at the expiration of the period specified by the Commission or by the first-mentioned officer, to be paid salary at the rate at which salary would have been payable to him if the reduction had not taken place.

(14) The admonition of an officer by the Commission or by an officer authorized for the purposes of sub-section (5) does not have any effect—

- (a) if the officer appeals against the admonition—unless the appeal lapses or is withdrawn or a Disciplinary Appeal Board confirms the admonition; or
- (b) in any other case—until the expiration of the period within which the officer may appeal against the admonition to a Disciplinary Appeal Board.

(15) A direction or decision under this section by the Commission or by an officer authorized for the purposes of sub-section (5) with respect to an officer does not take effect—

- (a) if the officer appeals against the direction or decision—unless the appeal lapses or is withdrawn or a Disciplinary Appeal Board confirms, either with or without a variation, the direction or decision; or
- (b) in any other case—until the expiration of the period within which the officer may appeal against the direction or decision to a Disciplinary Appeal Board.

59. (1) Where—Suspension
of officers.

- (a) an officer has been charged with having committed—
 - (i) an offence against a law of Australia or of a State or Territory; or
 - (ii) an offence against a law of a foreign country, being an offence which, if committed in Australia, would have constituted an offence against a law of Australia or of a State or Territory; or
- (b) the Commission is of the opinion that an officer may have failed to fulfil his duty as an officer,

and the Commission is of the opinion that it would be prejudicial to the effective operation of the Commission, to the interests of the public or to the interests of the officer and his fellow officers if the officer were to continue to perform the duties of his existing position, the Commission may, by notice in writing—

- (c) suspend the officer from duty; or
- (d) transfer the officer temporarily to another position for which he is qualified (whether at the same or a different locality) having the same classification as the position held by the officer.

(2) Where an officer is suspended from duty otherwise than by reason of circumstances referred to in paragraph (1) (a) before he is charged with misconduct, he shall, until an officer authorized for the purposes of sub-section 58 (3) decides whether he should be charged, be deemed to be absent on leave of absence with salary.

(3) Where an officer is suspended from duty at a time when he is absent on leave of absence, the suspension does not prevent his receiving any salary to which he is entitled during that period of absence.

(4) The suspension of an officer from duty does not prevent the granting to the officer of leave of absence with salary.

(5) Except as provided by sub-section (2), (3) or (4) or by section 60, an officer is not, unless the Commission, being satisfied that the officer is suffering or has suffered hardship, otherwise directs, entitled to be paid salary in respect of the period during which he is suspended.

(6) An officer who is suspended from duty is entitled to engage in paid employment during any period of suspension without salary.

60. (1) Where an officer is suspended from duty under section 59—Removal
and
variation of
suspension.

- (a) the Commission may, at any time, whether upon application by the officer or otherwise, remove the suspension or direct that he be paid salary during the suspension; and
- (b) the Commission shall, if the suspension continues for more than 30 days, forthwith after the suspension has continued for more than 30 days, consider whether the suspension should be removed or salary should be paid during the suspension.

(2) Where an officer has, by reason of the officer having been charged with an offence referred to in paragraph 59 (1) (a), been suspended from duty or transferred temporarily to another position and, upon the hearing of the charge—

- (a) the officer does not plead guilty, and is not found guilty in respect of the offence of which he is charged or of another offence of a kind referred to in that paragraph; or
- (b) the charge is not proceeded with,

the Commission shall, if it has not previously done so, remove the suspension or transfer the officer back to the position which he previously held, as the case may be.

(3) Where an officer has been suspended from duty or transferred temporarily to another position in circumstances referred to in paragraph 59 (1) (b) and—

- (a) if the officer is charged with misconduct—the officer holding an inquiry into the misconduct or a Disciplinary Appeal Board finds that the charge has not been established or the charge is withdrawn; or
- (b) in any other case—an officer authorized for the purposes of sub-section 58 (3) decides that the officer should not be charged with misconduct,

the Commission shall, if it has not previously done so, remove the suspension or transfer the officer back to the position previously held by him, as the case may be.

(4) Where—

- (a) an officer has been suspended from duty under section 59;
- (b) the amount of salary that would otherwise have been paid to the officer in respect of the period or a part of the period of the suspension was not paid to him; and
- (c) the Commission removes the suspension,

the officer shall, subject to sub-section (5), be paid that amount of salary.

(5) Where the Commission is satisfied that an officer to whom sub-section (4) applies has engaged in paid employment or work during the period or a part of the period of his suspension, the amount payable to him under that sub-section shall be reduced by the amount equal to the total of the amount of the earnings that the Commission is satisfied were received or are receivable by him in respect of that employment or work.

(6) Where the suspension of an officer who had, after the suspension commenced, sought and been granted leave of absence for a part of the period of suspension, is removed under this section, the officer is entitled to a credit of a period of leave of absence equal to that part of the period of suspension.

(7) Except where an officer is dismissed from the Service, the period during which the officer is suspended from duty counts as service for all purposes.

(8) Where an officer retires or resigns from the Service or dies while he is suspended from duty without salary, the Commission may, in its discretion, authorize payment to the officer, or to the estate of the deceased officer, of an amount equal to the salary that would otherwise have been paid to the officer in respect of the period of his suspension without salary less the amount (if any) of the earnings that the Commission is satisfied the officer received or was entitled to receive in respect of any employment or work engaged in by him while so suspended.

(9) Where, immediately before a direction or decision of an officer or of the Commission under section 58, a decision of the Commission under sub-section 61 (1) or a decision of a Disciplinary Appeal Board under section 62 takes effect in relation to an officer, the last-mentioned officer is under suspension from duty in connexion with the misconduct or offence to which the direction or decision is related, the suspension ceases upon that direction or decision taking effect.

61. (1) Where a court convicts an officer on a charge for an offence referred to in paragraph 59 (1) (a) or a court, without recording a conviction, finds that an officer has committed such an offence and the Commission, after giving the officer an opportunity to furnish to it, in writing, any explanation that he desires to make in relation to the offence, is of the opinion that, having regard to the nature and circumstances of the offence and the nature of the duties of the officer, the interests of the Commission justify it in so doing, the Commission may counsel the officer or may decide to—

Conviction
by courts.

(a) transfer the officer to another position, whether at the same or a different locality, being a position for which he is qualified and which has the same classification as, or a lower classification than, the position held by the officer, and determine the salary, within the salary range of the position, that is to be paid to the officer; or

(b) dismiss the officer from the Service.

(2) A decision of the Commission under sub-section (1) with respect to an officer does not take effect—

(a) if the officer appeals against the decision—unless the appeal lapses or is withdrawn or a Disciplinary Appeal Board confirms, either with or without a variation, the decision; or

(b) in any other case—until the expiration of the period within which the officer may appeal against the decision to a Disciplinary Appeal Board.

(3) Where, after a person charged with an offence referred to in paragraph 59 (1) (a) has been dismissed from the Service in accordance with a decision of the Commission under sub-section (1), the finding of the court in relation to the offence with which he was charged is nullified, the Commission may, upon application, in writing, made to it by the person, appoint the person as an officer, without probation, to fill his original position or an equivalent position, or if such a position is not available, an available position as nearly as possible equivalent to his original position.

(4) Where an officer charged with an offence referred to in paragraph 59 (1) (a) has, under sub-section (1), been transferred to another position and the finding of the Court in relation to the offence with which he was charged is nullified, the Commission may, upon application, in writing, made to it by the officer, transfer the officer to his original position or an equivalent position, or, where such a position is not available, to an available position as nearly as possible equivalent to his original position.

(5) Where the Commission refuses an application under sub-section (3) or (4), it shall notify the applicant, in writing, accordingly and furnish to him its reasons for the refusal.

(6) Where an officer serves a term of imprisonment, or a period of custody in relation to an alleged offence, but is not dismissed—

- (a) he shall be deemed, for the duration of his imprisonment or custody, to be on leave of absence without pay;
- (b) his service before that period of imprisonment or custody shall be regarded as being continuous with his service after that period;
- (c) the period of his imprisonment or custody shall not, unless the Commission otherwise determines, be regarded as service for any purpose under this Act; and
- (d) the Commission may determine that the original position occupied by the officer is vacant.

(7) For the purposes of this section a finding of a court in relation to an offence shall be regarded as having been nullified—

- (a) where a person has been convicted on the basis of that finding—if the conviction has subsequently been quashed or otherwise nullified or the person convicted has received a pardon or has been released from prison as a result of an inquiry into the conviction; or
- (b) in any other case—if the finding has been set aside.

(8) This section does not prevent an officer from being dealt with under another provision of this Act, but an officer shall not be punished under this Act twice in respect of the same matter.

62. (1) An officer may appeal to a Disciplinary Appeal Board— Appeals.

- (a) against his admonition by, or a direction or decision made or given with respect to him by, an officer or the Commission under section 58; or
- (b) against a decision made with respect to him by the Commission under sub-section 61 (1).

(2) Where the Commission has refused an application under sub-section 61 (3) or (4), the applicant may appeal against the refusal to a Disciplinary Appeal Board.

(3) In the hearing of an appeal under this section, the Disciplinary Appeal Board may take evidence on oath or affirmation.

(4) The regulations may prescribe the manner in which, and the time within which, appeals may be made under this section and the manner in which the hearing of appeals so made shall be conducted and may include provision for or in relation to the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation and the administering of oaths and affirmations.

(5) A Disciplinary Appeal Board shall hear each appeal submitted to it under sub-section (1) and may confirm, vary or set aside the direction or decision against which the appeal is made.

(6) Where an officer appeals under sub-section (1) against a direction or decision on the ground that the action to be taken in accordance with that direction or decision is excessively severe, evidence may be given on the hearing of the appeal—

- (a) if the officer was, under section 59, suspended without salary prior to the giving of that direction or the making of that decision—of any loss of earnings arising from that suspension;
- (b) if the officer is to be transferred to another position—of the expenses that will be incurred by the officer in connexion with that transfer; and
- (c) of matters relating to the previous employment history and general character of the appellent.

(7) A Disciplinary Appeal Board shall hear each appeal duly submitted to it under sub-section (2) and may—

- (a) confirm the refusal appealed against; or
- (b) direct the Commission, as follows:—
 - (i) if the appeal is against the refusal of an application under sub-section 61 (3)—that the Commission appoint the person as an officer, without probation, to fill his original position or an equivalent position, or, if such a position is not available, an available position as nearly as possible equivalent to his original position; or

- (ii) if the appeal is against the refusal of an application under sub-section 61 (4)—that the Commission restore the officer to a salary equivalent to his former salary or transfer him to his original position or an equivalent position, or, if such a position is not available, to a position as nearly as possible equivalent to his original position.

(8) A Disciplinary Appeal Board shall give reasons, in writing, for its decision on an appeal.

(9) The Commission shall take such action as is necessary to give effect to the decision of a Disciplinary Appeal Board.

Disciplinary
Appeal
Boards.

63. (1) For the purposes of this Part, the Commission shall, from time to time, arrange for the establishment of such Disciplinary Appeal Boards as are required.

(2) A Disciplinary Appeal Board with respect to an appeal by an officer shall be constituted by—

- (a) a Chairman, who shall be a person appointed by the Minister to be the Chairman of a Disciplinary Appeal Board;
- (b) an officer nominated by the Commission; and
- (c) a person, nominated as provided by the regulations, to represent officers.

(3) A person shall not be appointed to be the Chairman of a Disciplinary Appeal Board unless he is or has been a magistrate or is a barrister or solicitor of not less than 5 years standing.

(4) A Chairman of a Disciplinary Appeal Board shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed by the regulations.

(5) A Chairman of a Disciplinary Appeal Board shall be paid such allowances as are prescribed by the regulations.

(6) Sub-sections (4) and (5) have effect subject to the *Remuneration Tribunals Act 1973-1974*.

(7) Subject to sub-sections (4) and (5), the Chairman of a Disciplinary Appeal Board holds office for such period, and upon such terms and conditions, as the Minister determines.

(8) The officer referred to in paragraph (2) (b) and the person referred to in paragraph (2) (c) shall be nominated for the purposes of a particular appeal only, and an officer concerned in the laying of a charge against the appellant or in the inquiry related to the charge shall not be nominated for the purpose of an appeal relating to the charge.

(9) A Disciplinary Appeal Board may, when only 2 of the 3 members are present, with the consent of the appellant and of the Commission, exercise all the powers of a Disciplinary Appeal Board in respect of an appeal.

(10) Where, at a meeting of a Disciplinary Appeal Board, the members are divided in opinion on a question, that question shall be decided according to a decision of the majority but, if 2 members only are present and those members are equally divided on a question, the appeal shall be deemed to be adjourned for the purpose of being reheard by a Disciplinary Appeal Board.

64. (1) Where—

- (a) an officer authorized for the purpose of sub-section 58 (5) or a Disciplinary Appeal Board has found that a charge against a person under sub-section 58 (3) has been established; and
- (b) in respect of the charge—
 - (i) a sum was deducted from the salary of the person;
 - (ii) the salary of the person was reduced;
 - (iii) the person was transferred to another position; or
 - (iv) the person was dismissed from the Service,

Review of findings.

the person may, at any time, request the Commission, in writing, to review the finding, or the action taken in respect of the charge, on the ground that evidence that was not given, and could not reasonably be expected to be given, on behalf of the person in the course of the investigation of the charge is now available and that the evidence might, if it had been given, have resulted in the charge being found not to have been established, or in less severe action being taken in respect of the charge, as the case may be.

(2) A request under sub-section (1) shall set out particulars of the evidence that has become available.

(3) Where the Commission is satisfied that the ground of the request is established, the Commission shall review the finding or the action taken in respect of the charge, as the case may be.

(4) Where the Commission has reviewed a finding, the Commission shall—

- (a) if it is satisfied, in the light of the evidence given when the charge was being investigated and the evidence before the Commission in connexion with the review, that the person failed to fulfil his duty as an officer—confirm the finding; or
- (b) in any other case—quash the finding and take such action, by way of recompensing the person, as is, in the opinion of the Commission, reasonable and practicable in all the circumstances.

(5) Where the Commission has reviewed the action taken in respect of a charge, the Commission shall—

- (a) if it is satisfied, in the light of the evidence given when the charge was investigated and the evidence before the Commission in connexion with the review, that the action so taken was not too severe—confirm the action; or
- (b) in any other case—take such action to mitigate the severity of the action taken in respect of the charge as is, in the opinion of the Commission, reasonable and practicable in all the circumstances.

(6) Without limiting the power of the Commission under sub-section (4) or (5), the Commission may, if it considers it appropriate to do so, reappoint the person as an officer and appoint him to, or transfer the person to, his original position or an equivalent position, or, if such a position is not available, to an available position as nearly as possible equivalent to his original position.

(7) In this section—

- (a) a reference to the investigation of a charge is a reference—
 - (i) if the person charged appealed to a Disciplinary Appeal Board—to the investigation of the charge by that Board; or
 - (ii) in any other case—to the investigation of the charge by the officer authorized under sub-section 58 (5) to investigate the charge; and
- (b) a reference to the giving of evidence includes a reference to the submission or production of a statement or other material.

Division 7—Forfeiture of Office

Forfeiture of office.

65. (1) Where an officer is absent from duty without permission, and has been so absent for a continuous period of not less than 4 weeks, the Commission may send to him, by prepaid registered post addressed to him at the address of the officer last known to the Commission, a notice informing him that unless, within a period of 2 weeks from and including the date on which the notice was sent—

- (a) he returns to duty; or
- (b) he explains his absence and seeks the permission of the Commission for any further period of absence that may be necessary having regard to that explanation,

he will be deemed to have resigned upon the expiration of that period of 2 weeks.

(2) Where an officer to whom a notice under sub-section (1) has been sent does not, within a period of 2 weeks from and including the date on which the notice was so sent—

- (a) return to duty; or
- (b) explain his absence and seek the permission of the Commission for a further period of absence,

and the notice has not been revoked under sub-section (11), he shall be deemed to have resigned on the day following the expiration of that period of 2 weeks.

(3) Where a notice has been sent to an officer under sub-section (1) and, within the period of 2 weeks after that notice was so sent, the officer explains his absence and seeks the permission of the Commission for a further period of absence, the Commission shall, as soon as practicable, consider the matter and may, by notice in writing sent to him by pre-paid registered post addressed to him at his address last known to the Commission, inform him—

- (a) that he has been granted leave of absence for such period and on such conditions as are specified in the notice; or
- (b) that he is required to return to duty and, unless he returns to duty within a period of 2 weeks from and including the date on which the notice is sent, he will be deemed to have resigned upon the expiration of that last-mentioned period.

(4) Where an officer who is required by a notice sent to him under sub-section (3) to return to duty does not return to duty within the period referred to in the notice, and the notice has not been revoked under sub-section (11), he shall be deemed to have resigned on the day following the expiration of that period.

(5) A person who is deemed to have resigned his office in accordance with sub-section (2) or (4) may apply, in writing, to the Commission for re-appointment.

(6) Where the Commission is satisfied that a person making application under sub-section (5) had reasonable grounds for being absent, it may appoint the person as an officer, without probation, to fill his original position or an equivalent position, or, if such a position is not available, an available position as nearly as possible equivalent to his original position.

(7) Where the Commission refuses an application under sub-section (5), it shall notify the applicant, in writing, accordingly and furnish to him the reasons for its refusal.

(8) Where the Commission has refused an application under sub-section (5), the applicant may appeal against the refusal to a Disciplinary Appeal Board established under section 63.

(9) A Disciplinary Appeal Board shall hear each appeal submitted to it under sub-section (8) and may—

- (a) confirm the refusal appealed against; or

- (b) direct the Commission, as follows, that is to say, that it appoint the person as an officer, without probation, to fill his original position or an equivalent position, or, if such a position is not available, an available position as nearly as possible equivalent to the original position.

(10) The provisions of sub-sections 62 (3), (4), (8) and (9) apply to appeals made under this section in like manner as they apply to appeals against a refusal by the Commission of an application made under sub-section 61 (3).

(11) The Commission may, at any time before an officer is to be deemed to have resigned under this section, by notice in writing sent to the officer by pre-paid registered post addressed to him at his address last known to the Commission, revoke a notice previously sent to the officer under this section and the notice is then void and of no effect.

Division 8—Powers and Functions of the Commonwealth Conciliation and Arbitration Commission in respect of the Service

Interpretation.

66. (1) In this Division, unless the contrary intention appears—

“Conciliation and Arbitration Commission” means the Conciliation and Arbitration Commission established by the *Conciliation and Arbitration Act 1904-1974*;

“industrial dispute in respect of the Service” means a dispute (including a threatened, impending or probable dispute) as to an industrial matter in respect of the Service, and includes—

- (a) a part of an industrial dispute in respect of the Service;
- (b) an industrial dispute in respect of the Service so far as it relates to a matter in dispute; or
- (c) a question arising in relation to an industrial dispute in respect of the Service;

“industrial matter in respect of the Service” means any matter in relation to the salaries, wages, rates of pay or other terms or conditions of service or employment of officers or employees;

“industrial question in respect of the Service” means—

- (a) an industrial dispute in respect of the Service; and
- (b) an industrial matter in respect of the Service;

“prescribed” means prescribed by regulations made under this Act.

(2) Subject to sub-section (1), expressions used in this Division that are defined by section 4 of the *Conciliation and Arbitration Act 1904-1974* have in this Division the same respective meanings as they have in that Act.

(3) Officers and employees shall be deemed to be employees in an industry within the meaning of the *Conciliation and Arbitration Act 1904-1974*.

67. (1) The Conciliation and Arbitration Commission is empowered—

- (a) to prevent or settle, by conciliation or arbitration, industrial disputes in respect of the Service; and
- (b) to hear and determine industrial questions in respect of the Service submitted to it.

Settlement of industrial disputes and determination of industrial matters in respect of the Service.

(2) In relation to an industrial question in respect of the Service, the Conciliation and Arbitration Commission may, where it thinks it proper to do so, make an award that, in the opinion of the Conciliation and Arbitration Commission, is not, or may not be, in accordance with this Part or with any other law of Australia relating to salaries, wages, rates of pay or terms and conditions of service or employment of officers and employees, not being—

- (a) the *Compensation (Australian Government Employees) Act* 1971-1974, the *Commonwealth Employees' Furlough Act* 1943-1973 or the *Superannuation Act* 1922-1974; or
- (b) any other prescribed Act or the prescribed provisions of any other Act.

68. (1) Subject to this Division, Division 1 of Part III of the *Conciliation and Arbitration Act* 1904-1974 extends to and in relation to the powers and functions of the Conciliation and Arbitration Commission under this Division, to and in relation to proceedings under this Division and to and in relation to awards made under this Division.

Application of provisions of Conciliation and Arbitration Act.

(2) In the application of Division 1 of Part III of the *Conciliation and Arbitration Act* 1904-1974 in accordance with sub-section (1) of this section—

- (a) references to industrial disputes shall be read as references to industrial questions in respect of the Service;
- (b) references to the parties to an industrial dispute shall be read, in relation to the powers of the Commission under paragraph 67 (1) (b) of this Act, as references to employees to whose employment the industrial disputes or industrial matters relate, the Australian Telecommunications Commission and organizations of which any such employees are members; and
- (c) references to arbitration shall be read as including references to the hearing and determination of industrial matters in respect of the Service.

69. An award made under this Division shall, for the purposes of the *Conciliation and Arbitration Act* 1904-1974, be deemed to have been made under that Act.

Awards deemed to be made under Conciliation and Arbitration Act.

Public
Service
Arbitration
Act not to
apply.

70. The *Public Service Arbitration Act* 1920-1973 does not apply in relation to the employment of officers or employees of the Commission.

PART VI—FINANCE

Capital.

71. (1) The Treasurer shall determine the amount that should, in his opinion, be taken to be the value of the rights, property and assets vested in the Commission in accordance with paragraph 29 (1) (b) of the Transitional Provisions Act having regard to the values of the assets of Australia by reference to which the amounts shown in the Balance Sheet, as at the date immediately preceding the commencing date, of the Australian Post Office Services as the value of the assets referred to in that Balance Sheet were ascertained.

(2) The Treasurer shall determine the amount that should, in his opinion, be taken to be the sum of the amounts of the liabilities that became the responsibility of the Commission in accordance with paragraph 29 (1) (d) of the Transitional Provisions Act having regard to the amounts of the liabilities of Australia by reference to which the amounts shown in the Balance Sheet, as at the date immediately preceding the commencing date, of the Australian Post Office Services as “current liabilities” and “provision for long service leave” were ascertained.

(3) Amounts aggregating the amount by which the sum of the amounts determined under sub-section (1) exceeds the sum of the amounts determined under sub-section (2) are payable by the Commission to Australia at such times, and by such instalments, as the Treasurer from time to time determines.

(4) The Commission is liable to pay to Australia, at such times, and by such instalments, as the Treasurer from time to time determines, interest upon the amount by which the sum of the amounts determined under sub-section (1) exceeds the sum of the amounts determined under sub-section (2), less the sum of any amounts paid by the Commission under sub-section (3), at such rates as the Treasurer from time to time determines.

(5) The Treasurer may, under sub-section (4), determine different rates of interest in respect of different parts of the amount in respect of which interest is payable under that sub-section.

(6) Before making a determination under this section, the Treasurer shall afford the Commission an opportunity to furnish advice concerning the proposed determination and shall have regard to any advice furnished to the Treasurer by the Commission with respect to the proposed determination.

72. (1) The Commission may, with the approval of the Treasurer, borrow moneys that are from time to time necessary for the performance of its functions. Borrowing
by Commis-
sion.

(2) The Treasurer may, on behalf of Australia, out of moneys appropriated by the Parliament for the purpose, lend to the Commission, at such rate of interest and on such terms and conditions as he determines, moneys that the Commission is authorized to borrow under sub-section (1).

(3) The Commission may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(4) The Treasurer may, on behalf of Australia, guarantee the repayment by the Commission of amounts borrowed under this section otherwise than from Australia and the payment of interest on amounts so borrowed.

(5) The Commission shall not borrow moneys except in accordance with this section.

73. (1) In the performance of its functions, the Commission shall, in each financial year, pursue, as far as practicable, a policy directed towards having secured in respect of that year revenue sufficient— Financial
policy of the
Commis-
sion.

- (a) to meet all expenditure, and provision for expenditure, of the Commission properly chargeable to revenue; and
- (b) to provide, for expenditure by the Commission by way of capital expenditure, a sum equal to such proportion, not being less than one-half, as the Commission deems fit, of the amount estimated to be the amount ascertained in accordance with the formula $A + B - C + D - E - F + G$, where—

- A is the amount of the expenditure, and provision for expenditure, of the Commission, in respect of the financial year, on fixed assets, excluding any provision for depreciation and long service leave;
- B is the amount shown in the Balance Sheet of the Commission in respect of the financial year as the value of “stores” at the end of the year;
- C is the amount shown in that Balance Sheet as the value of “stores” at the end of the last preceding year;
- D is the amount shown in that Balance Sheet as the sum of the values of all the “current assets” of the Commission at the end of the year;
- E is the amount shown in that Balance Sheet as the sum of the values of all the “current assets” of the Commission at the end of the last preceding year;

F is the amount shown in that Balance Sheet as the sum of the amounts of all the “current liabilities” of the Commission at the end of the year; and

G is the amount shown in that Balance Sheet as the sum of the amounts of all the “current liabilities” of the Commission at the end of the last preceding year.

(2) The Commission shall, in the performance of its functions, operate as efficiently as possible and make available services provided by the Commission in the performance of those functions at rates and charges that are as low as practicable, consistently with its duty under sub-section (1).

(3) For the purposes of this section, the provision for expenditure properly chargeable to the revenue of a financial year includes—

- (a) provision made in respect of that year for depreciation; and
- (b) provision made in respect of that year for future or contingent liabilities, including—
 - (i) provision, as determined by the Treasurer, in respect of superannuation payments payable, or likely to become payable, in respect of officers and employees; and
 - (ii) provision for furlough or long service leave.

Bank
accounts.

74. (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The Commission shall pay all moneys received by it into an account referred to in this section.

Application
of moneys.

75. (1) Subject to this Act, the moneys of the Commission may be applied by the Commission—

- (a) in payment or discharge of the costs, expenses and other obligations of the Commission;
- (b) in payment of remuneration and allowances payable to any person appointed or employed under this Act; and
- (c) in making payments to Australia as provided by this Act, but not otherwise.

(2) Moneys of the Commission not immediately required for the purposes of the Commission may be invested—

- (a) on fixed deposit with an approved bank;
- (b) in securities of Australia; or
- (c) in any other manner approved by the Treasurer.

Surplus
revenue.

76. (1) For the purposes of this Act, the surplus of the Commission in a financial year is the amount (if any) of revenue remaining—

- (a) after meeting the expenditure and the provision for expenditure properly chargeable to that revenue; and
- (b) after providing for expenditure by the Commission by way of capital expenditure, an amount equal to one-half of the amount ascertained in accordance with the formula specified in paragraph 73 (1) (b).

(2) The surplus of the Commission for a financial year shall be applied in such manner as the Minister determines.

(3) In making a determination under sub-section (2), regard shall be had to any advice that the Commission has furnished to the Minister in relation to the financial affairs of the Commission.

(4) For the purposes of this section, the provision for expenditure properly chargeable to the revenue received or receivable in respect of a financial year has the same meaning as in section 73.

77. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission in accordance with accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

Proper
accounts to
be kept.

78. The Commission shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if so directed by the Minister, for any other period, and shall submit those estimates to the Minister not later than such date as the Minister directs.

Estimates.

79. The Commission shall not, except with the approval of the Minister—

Contracts.

- (a) enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$500,000 or, if a higher amount is prescribed by the regulations, that higher amount; or
- (b) enter into a lease of land for a period exceeding 10 years.

80. The Commission is not subject to taxation under any law of Australia or of a State or Territory.

Exemption
from
taxation.

81. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and records relating to assets of, or in the custody of, the Commission and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and the audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his doing so.

Audit.

(2) The Auditor-General may, in his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody, or disposal of assets by the Commission.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

PART VII—OFFENCES

Disclosure of contents of telecommunications messages.

82. (1) Subject to this section, a person who is or has been an officer or employee shall not divulge or communicate to any person, or make use of or record, the contents or substance of a telecommunications message that came to his knowledge or to which he had access by reason of his position as an officer or employee.

Penalty: Imprisonment for 2 years.

(2) Sub-section (1) does not prohibit the doing of any thing by a person—

- (a) in the performance of his duties as an officer or employee;
- (b) as a witness summoned to give evidence or to produce documents in a court of law;
- (c) in pursuance of the requirements of a law of Australia or a Territory; or
- (d) in other prescribed circumstances, being circumstances in which the doing of the thing was in the public interest.

83. (1) A person shall not—

- (a) with intent to defraud or to prevent the due sending or delivery of a telecommunications message, take a telecommunications message from the possession of an officer or employee of the Commission, a person acting for or on behalf of the Commission under a contract with the Commission or an employee of such a person;
- (b) with intent to defraud, take a telecommunications message from any place or vehicle in use by the Commission in the performance of its functions; or
- (c) steal, secrete or conceal or, except in the performance of duties as an officer or employee, destroy, a telecommunications message.

Theft of telecommunications messages, &c.

Penalty: Imprisonment for 7 years.

(2) A person shall not receive a telecommunications message knowing it to have been stolen, or unlawfully taken, secreted or concealed.

Penalty: Imprisonment for 7 years.

84. (1) A person shall not forge a telecommunications message.

(2) A person shall not, knowing it to be forged, utter a telecommunications message.

Forgery of telecommunications messages, &c.

(3) An officer or employee shall not transmit information or cause information to be transmitted as a telecommunications message where—

- (a) he knows the telecommunications message in respect of which the information is transmitted is forged; or
- (b) he knows that the information does not represent a telecommunications message sent or delivered to the Commission for transmission.

Penalty: Imprisonment for 10 years.

85. A person shall not—

- (a) knowingly and without a person's authority, submit, or cause to be submitted, to the Commission as a telecommunications message signed or to be sent by that person, a telecommunications message that was not so signed or to be sent;
- (b) knowingly submit, or cause to be submitted, to the Commission a telecommunications message signed with the name of a fictitious person;
- (c) wilfully and without the authority of the person sending a telecommunications message, alter that telecommunications message; or
- (d) knowingly write, issue or deliver a document purporting to be a telecommunications message transmitted by the Commission knowing that it is not such a message.

Sending false telecommunications messages.

Penalty: Imprisonment for 2 years.

Interception
of infor-
mation.

86. (1) A person shall not—

- (a) intercept;
- (b) authorize, suffer or permit another person to intercept; or
- (c) do an act or thing that will enable him or another person to intercept,

information passing over a telecommunications system.

Penalty: Imprisonment for 2 years.

(2) Sub-section (1) does not apply to or in relation to any act or thing done by an officer or employee in the course of his duties for or in connexion with—

- (a) the installation of a line, apparatus or equipment or the operation or maintenance of a telecommunications system; or
- (b) the identifying or tracing of any person in circumstances prescribed by the regulations.

(3) Except in the course of his duties as an officer or an employee, an officer or employee shall not divulge or communicate to any person, or make use of or record, information that has been intercepted in its passage over a telecommunications system.

Penalty: Imprisonment for 2 years.

(4) For the purposes of this section, interception of information passing over a telecommunications system consists of listening to or recording, by any means, information in its passage over that telecommunications system without the knowledge of the person for whom that information is being transmitted.

(5) Where a person lawfully on premises or in a vessel, vehicle or aircraft to which a telecommunications service is provided by the Commission, by means of a telecommunications installation that is part of that service—

- (a) listens to or records information that is being transmitted over that telecommunications service, being information transmitted to or from those premises; or
- (b) listens to information as a result of a technical defect in a telecommunications system or the mistake of an officer or employee of the Commission,

the listening or recording does not, for the purposes of this section, constitute the interception of the information.

(6) In this section—

“telecommunications system” does not include the telephone system;

“telephone system” has the same meaning as in the *Telephonic Communications (Interception) Act 1960-1973*.

87. (1) A person shall not, by any false pretence or representation, defraud the Commission of any rental, fee or charge properly payable by such person for the use of a telecommunications service provided by the Commission. Fraudulent representation and devices.

(2) A person shall not, by means of an apparatus or device connected to a telecommunications installation belonging to the Commission or used in connexion with a telecommunications system—

- (a) defraud the Commission of any rental, fee or charge properly payable for the use of a telecommunications service; or
- (b) cause the Commission to provide a telecommunications service to some other person without payment by that other person of the appropriate rental, fee or charge.

Penalty: Imprisonment for 5 years.

88. (1) A person shall not manipulate, tamper with or interfere with any telecommunications installation belonging to the Commission in such a manner as to hinder the normal operation of a telecommunications service provided by the Commission. Interference with telecommunications services.

(2) A person shall not use or operate any apparatus or device, whether or not it is connected to a telecommunications installation belonging to the Commission or used in connexion with a telecommunications system in such a manner as to hinder the normal operation of a telecommunications service provided by the Commission.

Penalty: Imprisonment for 2 years.

89. (1) A person shall not wilfully assault or obstruct an officer or employee in the execution of his duty. Obstructing officers.

Penalty: Imprisonment for 2 years.

(2) A person shall not, while in or upon any premises used in connexion with performance of its functions, behave in a disorderly manner or obstruct or hinder the doing, by or on behalf of the Commission, of any act or thing that the Commission is authorized by this Act to do, including the provision of any service that the Commission is so authorized to provide.

Penalty: \$200.

(3) An officer or employee who has reasonable grounds for believing that a person is acting in contravention of sub-section (2) may require the person to leave the premises and, if the person refuses or fails to comply with the request, may, with such assistance as he deems necessary, remove the person from that place.

90. A person shall not wilfully damage, deface, interfere with, remove or destroy a telecommunications installation or any part thereof belonging to the Commission. Damage to installations, &c.

Penalty: Imprisonment for 2 years.

Arrest
without
warrant.

91. A person may, without warrant, arrest another person if he has reasonable grounds to believe that that other person has committed an offence against section 90.

Charging for
use of
telecom-
munications
service
provided by
Commis-
sion.

92. A person for whom the Commission has provided a telecommunications service shall not, except with the authority of the Commission or except as provided in the By-laws, demand or receive any payment or valuable consideration from any other person for the use of that service.

Penalty: \$200.

Un-
authorized
directories.

93. (1) A person shall not, without the authority of the Commission, print, publish or circulate any list or directory purporting to be a list or directory of subscribers to, or persons provided with, any telecommunications service by the Commission.

Penalty: \$200.

(2) Every list or directory printed, published or circulated in contravention of this section is forfeited to Australia, and shall, on demand in writing by or on behalf of the Commission, be delivered up to it.

Persons
other than
the
Commission
not to
construct,
maintain or
operate
telecom-
munications
installations.

94. (1) Subject to sub-sections (2) and (3), a person other than the Commission—

- (a) shall not erect, maintain or operate a telecommunications installation within Australia; or
- (b) attach a line, equipment or apparatus to a telecommunications system.

Penalty: Imprisonment of 2 years.

(2) Sub-section (1) does not apply to the erection, maintenance or operation of telecommunications installations—

- (a) by the Australian National Railways Commission or by the railway authority of a State, being installations required for the transmission, by lines located wholly within the boundaries of lands vested in the Australian National Railways Commission or in that authority, of communications the transmission of which is necessary for the working of the railways for which the Australian National Railways Commission or that authority is responsible;
- (b) by an authority of a State responsible for operating tramway or omnibus services in the State, being installations required for the transmission, by line, of communications the transmission of which is necessary for the operation of the tramway or omnibus services for which the authority is responsible;
- (c) by any person authorized by the Commission to do so under section 13 to the extent and on the terms and conditions subject to which that person is so authorized under that section;

- (d) by any person who is the holder of a licence under the Wireless Telegraphy Act, to the extent that the person is authorized by the terms of the licence;
- (e) by the Australian Broadcasting Commission in relation to Division 3 of Part III of the *Broadcasting and Television Act* 1942-1974;
- (f) by the holder of a licence under Part IV of the *Broadcasting and Television Act* 1942-1974 in accordance with the terms of the licence;
- (g) by any person, being installations which are capable of use only for the transmission of communications within or upon land or premises of which he is the owner or occupier and which are used solely for his own purposes; or
- (h) by the Overseas Telecommunications Commission in relation to Division 3 of Part II of the *Overseas Telecommunications Act* 1946-1973 in so far as this applies to telecommunications installations and systems owned and operated by the Overseas Telecommunications Commission for communications between Australia and overseas and otherwise not inconsistent with the *Overseas Telecommunications Act* 1946-1973.

(3) Sub-section (1) does not apply to the attachment of a line, equipment or apparatus to a telecommunications system to the extent that the attachment is authorized by the Commission under section 13 and the terms and conditions subject to which it is so authorized are complied with.

(4) The Commission may authorize a person to take possession of, remove or destroy the whole or any part of a telecommunications installation established, maintained or operated in contravention of this section and may enter on premises at any reasonable hour of the day for that purpose.

PART VII.—PROTECTION OF PROPERTY OF THE COMMISSION

95. (1) Subject to this section, where—

- (a) a person does work (whether by himself or by his servants or agents) in circumstances in which the person, servant or agent has reasonable cause to believe that the doing of the work is likely to interfere with or damage property of the Commission; and
- (b) in the course of doing that work, the person, a servant of the person acting in the course of his employment with that person or an agent interferes with or damages (whether by negligent act, omission or otherwise) the property referred to in paragraph (a),

Compen-
sation for
interference
or damage.

the person is liable to pay to the Commission compensation for that interference or damage.

(2) It is a defence in any proceedings under sub-section (1) for the recovery of compensation if the person proves that—

(a) before commencing the work—

(i) he had given notice in writing to the Commission that he proposed to do the work; and

(ii) he had given the Commission a reasonable opportunity for an officer or employee authorized by the Commission to confer with him as to the manner of carrying out the work; and

(b) if the Commission so required, he had permitted an officer or employee authorized by the Commission to be present and to observe the carrying out of the work.

(3) This section does not affect the liability under any other provision of this Act or any other law of any person in respect of any interference or damage to which this section relates but the Commission is not entitled to be compensated both under this section and under another provision of this Act or under any law in respect of the same interference or damage.

(4) This section has no application in relation to interference with, or damage to, property of the Commission caused by injurious interference from an electrical line or installation.

Work done
by Com-
mission to
protect
property.

96. (1) Where—

(a) a person does, or proposes to do, work in the vicinity of property of the Commission;

(b) the Commission is of the opinion that, by reason of that work, it is necessary, for reasons of safety, or for the purpose of protecting the property of the Commission or ensuring the efficiency of the telecommunications system, to remove, reconstruct or otherwise do work in connexion with, the property of the Commission; and

(c) the Commission does that removal, reconstruction or other work, the person is liable to pay to the Commission such amount, not exceeding the cost of the work done by the Commission, as is determined by the Commission, and the amount may be recovered as a debt due to the Commission in a court of competent jurisdiction.

(2) Where—

(a) a person proposes to do work in the vicinity of property of the Commission;

- (b) the person requests the Commission to remove, reconstruct or do some other work in connexion with the property of the Commission for the purpose of permitting or facilitating the doing of the proposed work by the person; and
- (c) the Commission does the removal, reconstruction or other work in accordance with the request,

the person is liable to pay to the Commission such amount, not exceeding the cost of the work done by the Commission, as is determined by the Commission, and that amount may be recovered as a debt due to the Commission in a court of competent jurisdiction.

(3) The Commission may require a person who makes a request under sub-section (2) to give security for the payment of any amount that the person may become liable to pay under that sub-section.

PART IX—MISCELLANEOUS

97. (1) The Commission is an approved authority for the purposes of the *Superannuation Act* 1922-1974. Super-annuation.

(2) For the purposes of sub-sections 4 (3A) and (4) of that Act, the Managing Director, the Chief General Manager and a person appointed as a full-time Chairman of a Promotions Appeal Board shall each be taken to be a person who is required, by the terms of his appointment, to give the whole of his time to the duties of his office.

(3) For the purposes of sections 145 and 146 of that Act, the Managing Director, the Chief General Manager and a person appointed as a full-time Chairman of a Promotions Appeal Board shall each be deemed to be employed by the Commission.

(4) For the purpose of that Act, the termination of the appointment—

- (a) of the Managing Director under section 28;
- (b) of the Chief General Manager under section 34;
- (c) of a full-time Chairman of a Promotions Appeal Board under section 52,

by reason of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

(5) Nothing in this Act authorizes the provision of superannuation benefits for a person appointed or employed under this Act otherwise than under the *Superannuation Act* 1922-1974.

98. (1) Subject to sub-section (4), a notice or other document required to be served under this Act may be served personally or by post. Service of notices, &c.

(2) Service by post of a notice or other document upon the owner or occupier of land may be effected by sending the notice or other document to the owner or occupier by pre-paid registered post addressed to him at his address last known to the Commission.

(3) Where—

(a) the Commission is unable, after diligent inquiry, to ascertain the identity of the owner of land; or

(b) service on the owner of land cannot be effected under sub-section (1),

service on that owner may be effected by causing a copy of the notice or other document to be published in a newspaper circulating in a district in which the land is situated and—

(c) if the land is occupied—leaving a copy of the notice or other document with the occupier; or

(d) if the land is not occupied—affixing, if practicable, a copy of the notice or other document to a conspicuous part of the land.

(4) Where the Commission is unable, after diligent inquiry, to ascertain—

(a) whether land is occupied; or

(b) the identity of a person occupying land,

it may treat the land as being unoccupied.

(5) Where service of a notice or other document on the occupier of land cannot be effected under sub-section (1), service on the occupier may be effected by causing a copy of the notice or other document to be published in a newspaper circulating in the district in which the land is situated and affixing, if practicable, a copy of the notice or other document to a conspicuous part of the land.

Annual
report.

99. (1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations during the financial year ending on that date, together with a Balance Sheet and other financial statements in respect of that year in such form as the Treasurer approves.

(2) Before furnishing financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

(a) whether the statements are based on proper accounts and records;

(b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the affairs of the Commission;

(c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and

- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause the report and the financial statements together with the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(4) The first report and financial statements to be prepared by the Commission under this section shall relate to the period commencing on the commencing date and ending on 30 June 1976.

100. (1) The Commission shall, upon request by the Minister, furnish to the Minister such reports, documents and information concerning its operations as the Minister specifies. Further reports.

(2) The Commission shall, at all times, keep the Minister informed concerning the operations of the Commission.

101. Proceedings do not lie against the Commission, an officer or employee of the Commission, a person acting for or on behalf of the Commission under a contract with the Commission or an employee of such a person in respect of any loss or damage suffered by a person— Protection from actions.

- (a) by reason of any default, delay, error, omission or loss, whether negligent or otherwise, in the transmission or delivery of a telecommunications message by the Commission; or
- (b) by reason of any default, delay, error or omission, whether negligent or otherwise, in respect of the provision, maintenance or operation of a telecommunications service.

102. (1) An offence against this Act, other than an offence that may, apart from this section, be dealt with summarily, may be prosecuted summarily or upon indictment or, where the law of the State or Territory in which the proceedings are brought makes provision for an offender who pleads guilty to a charge to be dealt with by the court otherwise than on indictment, the court may deal with the offender in accordance with that law. Offences—how dealt with.

(2) Nothing in sub-section (1) renders the offender liable to be punished more than once for an offence.

(3) Where proceedings for an offence against this Act are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or with the consent of the defendant and of the prosecutor may, if the court is satisfied that it is proper to do so, determine the proceedings summarily, but the court shall not impose a penalty exceeding a fine of \$1,000 or imprisonment for a period exceeding 6 months in respect of the offence.

(4) In this section, a reference to an offence against this Act includes a reference to an offence against the regulations or the By-laws.

Reward for information as to damage to property.

103. Where the Commission learns, as a result of information furnished to the Commission by a person, the identity of a person who has wilfully damaged, defaced, interfered with, removed or destroyed property belonging to, or under the control of, the Commission, the Commission may pay to that first-mentioned person, by way of reward, a sum determined by the Commission but not exceeding \$100 or such higher amount as may be prescribed by the regulations.

Attachment of salaries.

104. (1) Where judgment has been given by a court against an officer or employee for the payment of a sum of money, the person in whose favour the judgment is given may serve on the Commission a copy of the judgment, certified under the hand of the registrar or other proper officer of the court, and a statutory declaration stating that the judgment has not been satisfied by the judgment debtor and setting out the amount due under the judgment by the judgment debtor.

(2) Upon the service on it of a judgment and a statutory declaration in accordance with this section, the Commission shall, as soon as practicable, notify the judgment debtor in writing of the service of the copy of the judgment and the statutory declaration and require him to state in writing, within the time specified in the notice, whether the judgment has been satisfied and, if it has been satisfied, to furnish evidence showing that it has been satisfied or, if the judgment has not been satisfied, to state the amount then due under the judgment.

(3) If the judgment debtor fails to satisfy the Commission, within the time specified in the notice given under sub-section (2), that the judgment has been satisfied, the Commission may, from time to time, deduct from any moneys due to the judgment debtor such sums as appear to the Commission to be necessary to enable the judgment to be satisfied, or may direct the deduction therefrom of such sums, and shall pay, or direct the payment of, those sums to the judgment creditor.

(4) The Commission shall not, at any time, make a deduction, or direct a deduction, that would reduce the amount to be received by the judgment debtor to less than one-third of the amount that would, but for the provisions of this section, be payable to the judgment debtor.

(5) Where more than one judgment and statutory declaration are served on the Commission in respect of a particular judgment debtor, the judgments shall be satisfied in the order in which copies of the judgments are served upon the Commission.

(6) A payment made to the judgment creditor in pursuance of this section shall, as between the Commission and the judgment debtor, be deemed to be a payment by the Commission to the judgment debtor.

(7) A person to whom a payment has been made in pursuance of this section shall notify the Commission immediately a judgment in respect of which a payment was made is satisfied.

Penalty: \$100 or imprisonment for 3 months.

(8) If a payment made in pursuance of this section exceeds the amount due under the judgment, the excess is repayable by the judgment creditor to the judgment debtor and, in default of payment, is recoverable by the judgment debtor from the judgment creditor as a debt in a court of competent jurisdiction.

(9) Where the Commission is satisfied that the estate of an officer or employee has been sequestrated, either voluntarily or compulsorily, for the benefit of his creditors and that he has not been discharged from bankruptcy, this section does not apply in relation to the officer or employee.

105. For the purpose of any legal proceedings with respect to, and for the purpose of any prosecution for an offence with respect to, a telecommunications message, that message shall be deemed to be the property of the Commission from the time it is received by the Commission until it is delivered to the person for whom it is intended.

Telecommunications messages deemed to be property of the Commission.

106. (1) Where a person (including Australia, a State and an authority of Australia or a State) applies to the Commission for the provision of a telecommunications service of a special kind or in special circumstances, or for the provision of a special facility, the Commission may enter into an agreement with the person with respect to the provision of the service or facility under which the person agrees—

Contributions towards the provision of special services or facilities.

- (a) to make a contribution towards the cost of providing and maintaining the service or facility;
- (b) to render other assistance to the Commission for the purpose of facilitating the provision of the service or facility; or
- (c) to indemnify the Commission against any loss the Commission may suffer by reason of the provision of the service or facility.

(2) An agreement referred to in sub-section (1) may provide for the person to advance to the Commission an amount on account of the cost of providing the service or facility upon such terms and conditions as to the repayment of the whole or a part of the advance as specified in the agreement.

107. (1) Where—

- (a) the Commission enters, either with or without a vehicle or horse, onto premises, being a pier, wharf, quay, landing place, bridge, ferry or part of a road, or uses premises, being a pier, wharf, quay or landing place, in connexion with the performance of its functions; and
- (b) a toll, fee or charge would, but for this section, be payable in respect of the entry onto the premises or the use of the premises, as the case may be,

Payment of tolls, &c.

the toll, fee or charge is not payable by the Commission or any other person in respect of the entry onto the premises, or the use of the premises,

but the Commission is liable to pay to the owner or occupier of the premises, in respect of all entries by the Commission onto the premises, or in respect of all uses of the premises, during a period of 12 months, or such shorter period as is agreed upon between the Commission and the owner or occupier, such sum as is agreed upon by the Commission and the owner or occupier or, in the absence of agreement, as is determined by arbitration in accordance with the provisions of an Act of a State or an Ordinance of a Territory in which the premises are situated relating to the settlement of commercial disputes by arbitration.

(2) This section does not apply to a toll, fee or charge that amounts to taxation.

(3) In this section—

- (a) a reference to entry by the Commission onto premises in connexion with the performance of its functions includes a reference to the entry onto premises—
 - (i) of an officer or employee in the course of performing his duties; and
 - (ii) of a person engaged on behalf of the Commission in the delivery of telecommunications messages or for purposes connected with the delivery of telecommunications messages;
- (b) a reference to the use of premises by the Commission in connexion with the performance of its functions includes a reference to the use of premises by a person acting on behalf of the Commission in connexion with the performance of its functions; and
- (c) a reference to the owner or occupier of premises, being a part of a road, is a reference to the person entitled to be paid a toll, fee or charge for entry onto that part of the road.

Grants of
financial
assistance.

108. The Commission may, upon such conditions as it thinks fit—

- (a) grant financial and other assistance to a society, institution or other body for the purpose of assisting that body to provide educational, social, sporting or recreational facilities for officers or employees;
- (b) provide scholarships, fellowships or endowments for officers and employees and for other persons engaged in research in relation to telecommunications services; and
- (c) provide financial assistance to societies, institutions and bodies engaged in research in relation to telecommunications services or in the collection and dissemination of information with respect to any such research.

Consultative
Council.

109. (1) There is hereby established a Consultative Council comprising representatives of the Commission and of organizations of officers and employees.

(2) The By-laws shall determine the manner in which the Council is to be constituted, the functions of the Council and the manner in which the Council is to carry out its functions.

110. The Commission may, in a particular case for special reasons, or in cases included in a particular class of cases for special reasons, remit or reduce a charge that would otherwise be payable under this Act. Remission of charges.

111. (1) The Commission may make By-laws, not inconsistent with this Act and the regulations, prescribing all matters which are required or permitted to be prescribed by the By-laws, and making provision for, or with respect to— By-laws.

- (a) the establishment, maintenance, operation and provision of telecommunications services and facilities;
- (b) the terms and conditions governing the provision to or use by any person of telecommunications services or facilities;
- (c) the terms and conditions governing the use by a person of a telecommunications service or facility provided in part by the Commission and in part by that person;
- (d) the protection of the telecommunications network, services or facilities from injurious interference from an electric line or installation or by reason of the operation of electrical apparatus, machinery or equipment;
- (e) the publication of telecommunications directories;
- (f) the receipt, transmission and delivery of inland telegrams;
- (g) the terms and conditions of employment of officers and employees; and
- (h) penalties by way of a fine not exceeding \$200, or imprisonment not exceeding 6 months, or both, for a breach of a By-law.

(2) By-laws shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act* 1903-1973.

(3) Sections 48 and 49 of the *Acts Interpretation Act* 1901-1973 apply to By-laws in like manner as they apply to regulations.

112. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed by the regulations, or which are necessary or convenient to be prescribed by the regulations for carrying out or giving effect to this Act, and making provision for, or with respect to— Regulations.

- (a) the application of Division 6 of Part V to and in relation to an employee who—
 - (i) has been in continuous employ of the Commission for a period of not less than one year; or
 - (ii) has been engaged by the Commission to serve for a period of not less than one year,

- including provisions modifying and adapting the provisions of that Division in relation to such an employee;
- (b) the preservation of specified existing and accruing rights by a person appointed to the office of Managing Director, Chief General Manager or full-time Chairman of a Promotions Appeal Board or by a person appointed or deemed to have been appointed as an officer who was, immediately before he was so appointed, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1975* applied, including provisions modifying and adapting the *Public Service Act 1922-1975* for the purpose of enabling such a person to apply for promotion to an office in the Australian Public Service or appeal against a promotion to an office in that Service;
 - (c) the payment of the costs in proceedings before a Disciplinary Appeal Board, and the assessment of those costs;
 - (d) the sending over a telecommunications service of indecent, obscene or offensive communications, or the use of a telecommunications service for the purpose of harassing a person; and
 - (e) penalties by way of a fine not exceeding \$200 or imprisonment not exceeding 6 months, or both, for offences against the regulations.
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NOTE

1. Act No. 55, 1975; assented to 12 June 1975.