

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN CAPITAL TERRITORY GOVERNMENT SERVICE  
(CONSEQUENTIAL PROVISIONS) BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and new clauses to be moved on behalf of the  
Government

(Circulated by authority of the  
Minister Assisting the Prime Minister for Public Service Matters,  
the Hon Gary Johns, MP)

**AUSTRALIAN CAPITAL TERRITORY GOVERNMENT SERVICE  
(CONSEQUENTIAL PROVISIONS) BILL 1994**

(Amendments to be moved on behalf of the Government)

**OUTLINE**

The amendments to the Bill:

- . insert a time frame of 18 months within which proclamation of the Act must occur;
- . provide a mechanism for access back to the Australian Public Service at or below level for officers who are to become members of the separate public service of the ACT without the need for a merit test;
  - such a mechanism is currently available to officers of the Service to enable them to move between offices within the Service through the operation of section 50 of the *Public Service Act 1922*;
  - the proposed mechanism is to be available only for a limited period following the establishment of the separate Service;
- . insert a further technical amendment to the amendments contained in Schedule 5 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* so far it relates to the *Merit Protection (Australian Government Employees) Act 1984*;
- . provide for the relevant provisions of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* to commence immediately after commencement of this Bill;
- . deal with recreation leave credits where an ACT officer is appointed to the Service under mobility arrangements without a break in service. In such a case:
  - recreation leave credits held by an officer in respect of ACT service will be transferred to the APS;
  - on the first Australian Public Service recreation leave accrual date following appointment to the APS the officer will be credited with recreation leave in respect of service in the Australian Public Service and the ACT service for which no recreation leave has yet been credited; and
  - the liability for payment in respect of recreation leave loadings will be transferred to the Australian Public Service;

- . enable staff moving from the Australian Public Service to the ACT public service, under the ongoing mobility arrangements, to carry over their recreation leave - the amendment prevents the payment in lieu of recreation leave in such cases;
- . give the Legislative Assembly of the Australian Capital Territory the power to disallow a determination made by the Remuneration Tribunal in relation to ACT offices;
- . make other technical amendments.

#### **FINANCIAL IMPACT STATEMENT**

No significant financial impact has been identified.

## NOTES ON AMENDMENTS

### Amendment (1)

This amends clause 2 by inserting a new subclause 2(2) which provides that if the Act has not commenced before the end of the period of 18 months from Royal Assent the Act is taken to be repealed.

### Amendment (2)

This amends the Bill by inserting a new clause 6A in the Bill which provides for an additional form of mobility between the Australian Public Service (the Service) and the public service of the Australian Capital Territory. It will enable an officer of the ACT public service who was previously an officer of the Service, but ceased to be such an officer by the operation of section 5 of the Act, to be transferred under section 50 of the Public Service Act 1922 (the PS Act) to a vacant office in the Service at or below the classification held by that person immediately before transfer day (as defined in section 3 of the Act). Under provisions of the PS Act an officer may be transferred under section 50 without merit selection.

Subclause 6A(1) defines the terms "eligible ACT officer" and "vacant office" for the purposes of clause 6A.

Subclause 6A(2) provides that for the purposes of subsection (3) which permits an eligible ACT officer to apply for a transfer to a vacant office, an eligible ACT officer is taken to hold an office in the Service having the classification of the office which the officer held in the Service immediately prior to transfer day (as defined in section 3 of the Act). Where the person was an unattached officer of the Service immediately prior to transfer day he or she is taken to hold an office having a classification the same as his or her classification as an unattached officer.

Subclause 6A(3) enables an eligible ACT officer to apply for a vacant office in the Service which has the same classification or a lower classification than the classification of the office the person is taken to hold under subsection 6A(2). An application under subsection (3) may then be dealt with in the Department in the same way as an application for transfer by an officer of the Service.

Subclause 6A(4) provides that certain provisions of Division 4 of Part III of the PS Act apply, to the extent they relate to transfers, in relation to an eligible ACT officer who has applied under subsection (3) as if the person were an officer of the Service.

Subclause 6A(5) provides that if an ACT officer applies for a vacant office under this section and is transferred under section 50 of the PS Act the person is taken to be appointed without probation to the office in the Service on the day on which the transfer takes effect unless the person was serving a period of probation in the public service of the ACT.

The subclause also provides that if the office is vacant when the transfer takes effect the person is taken to be appointed to the office in accordance with the PS Act on the day on which the transfer takes effect. If the office is occupied when the transfer would apart from subclause 6A(5)(b) take effect the person is taken to be appointed to the Service on that day as an unattached officer. The latter circumstance may arise if the transfer is made to an office which is an expected vacancy just prior to the end of the period referred to in subclause 6A(9).

Subclause 6A(6) provides in relation to aspects of probation and is intended to reflect as much as possible the special probation provisions provided in the Bill at subclauses 6(4) and (5) and 6(6) which are applicable where an ACT officer is appointed to the Service under the reciprocal mobility scheme. Subclause 6A(6) provides that where an eligible ACT officer is appointed to the Service under these special transfer provisions and that person was an officer of the ACT public service whose appointment has not been confirmed, the period of probation completed by the person as an ACT officer and the period of probation completed by the ACT officer when he or she was previously an officer of the Australian Public Service are taken to have been part of the period of probation the officer will now complete under section 47 as an appointee to the Service on probation in accordance with clause 5(d).

Subclause 6A(7) provides that a transfer made on an application under subsection (3) is not subject to the approval of any person other than the Secretary who transfers the officer. Under section 50J of the PS Act where a section 50 transfer occurs between Departments in the Service the Secretary of the losing Department may withhold approval of the transfer and the matter is taken to an approving authority for a decision. This provision makes it clear that the transfer of an ACT officer to an office in the Service can occur without the approval of the ACT equivalent of a departmental Secretary.

Subclause 6A(8) provides that subject to subclauses (9) and (10) a transfer made on an application under subclause (3) takes effect in accordance with the provisions relating to the taking effect of all transfers in section 50E of the PS Act.

Subclause 6A(9) provides that if under the taking effect provisions, a transfer would take effect after the end of a period of 12 months from transfer day (as defined in section 3 of the Act) the transfer is to take effect on the last day of that period. This provision was included to ensure that all stages of

a transfer, including the taking effect, are completed at the end of the 12 month period commencing on the transfer day.

Subclause 6A(10) provides that a transfer made on an application under subclause (3) cannot take effect unless the ACT officer resigns from the ACT public service so that he or she ceases to be an ACT officer immediately before the transfer takes effect.

Subclause 6A(11) provides a power to cancel a transfer made on an application under subclause (3) where the officer does not commence duties within a reasonable time after the transfer takes effect. The cancellation of the transfer has the effect of ceasing the application of subclause (5). This is similar to the power in subclause 6(7) to cancel an appointment to the Service under the reciprocal mobility provisions where the officer does not commence duties within a reasonable time.

Subclause 6A(12) provides that the availability of the transfer power where an eligible ACT officer applies under subclause (3) ceases after the end of the period of 12 months commencing on transfer day (as defined clause 3 of the Bill).

#### **Amendment (3)**

This amendment omits clause 16 of the Bill and substitutes a new clause 16. The substituted clause 16 is similar in effect to the omitted clause 16 except that the substituted clause 16 also omits the item in Schedule 5 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* that inserts certain definitions in section 3(1) of the *Merit Protection (Australian Government Employees) Act 1984* (MP Act). There is no longer a need for the proposed definitions. The amendment also corrects an incorrect reference to the Principal Act in subclause 16(2).

Proposed subclause 16 provides for:

- . the omission of the items in Schedule 5 of the 1988 Act which insert the definitions of "ACT enactment", "Self Government Act" and "Territory authority" in section 3(1) of the MP Act and the item which inserts section 6A in the MP Act as these items are no longer required;
- . the insertion in Schedule 5 of the items set out in Part 3 of Schedule 1 which provides in broad terms that the Merit Protection and Review Agency (MPRA) may with the consent of the Minister and on a "user pays" basis enter an arrangement with the ACT under which the MPRA would perform certain functions for the ACT. Further explanation of these amendments is made in the explanatory material relevant to Schedule 1 to the Bill.

#### Amendment (4)

This amendment omits subclause 18(2) of the Bill and substitutes a new subclause 18(2) so that in addition to amending the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) it will effect amendments to the *Remuneration Tribunal Act 1973* (RT Act). The amendment to subclause 18(2) does not effect any change to amendments to the SRC Act.

An amendment to subclause 3(3) of the RT Act was included in Schedule 5 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (the 1988 Act).

Additional amendments to the RT Act are being made to give the Legislative Assembly of the ACT the power to disallow determinations made by the Remuneration Tribunal in relation to ACT offices.

Further explanation of these amendments is made in the explanatory material relevant to Amendment 8.

#### Amendment (5)

This amendment inserts a new clause 18A in the Bill which provides for commencement of items in Schedule 5 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (the 1988 Act).

Under clauses 14, 15, 16 and 18 in Part 3 of this Bill it is proposed to amend certain provisions of Schedule 5 of the 1988 Act and in clause 17 to insert new provisions into Schedule 5. Some of the provisions of Schedule 5 have not commenced. In order for these provisions to take effect Proclamation in accordance with subsection 2(3) of the 1988 Act would be required. Inclusion of this commencement provision avoids duplication of administrative action which would be necessary to commence the provisions of the 1988 Act simultaneously with the commencement of the provisions of this Bill.

#### Amendment (6)

This amendment inserts a new clause 21A in the Bill which will operate to enable officers of the ACT public service who move to the Service by virtue of being appointed in accordance with section 6 or transferred by virtue of the operation of section 6A to carry over recreation leave credits and entitlement to leave loading.

Subclauses 21A(1) and (2) provide that this clause applies to an ACT officer appointed to the Service or taken to be appointed to the Service in accordance with the provisions of section 6 or section 6A.

Subclause 21A(3) allows an ACT officer who has a recreation leave entitlement at the date immediately prior to appointment to the Service to retain those entitlements on appointment.

Subclause 21A(4) provides that service with the ACT public service since the last date on which recreation leave was accrued by an officer of the Service who has moved from the ACT public service is to be taken into account for the purposes of calculating accrual of recreation leave pursuant to the *Public Service Act 1922*.

Subclauses 21A(5) and (6) operate to provide that where an ACT officer who moves to the Australian Public Service had an entitlement to leave loading immediately prior to moving to the Service, that person will be entitled to leave loading as if it had accrued under the provisions of the relevant Commonwealth award.

#### Amendment (7)

Subclause 22(2) of the Bill is amended to provide that persons moving to the ACT public service from the Australian Public Service, after transfer day, are not entitled to be paid out for their recreation leave or long service leave entitlements. The existing provisions of the Bill had this effect in relation to long service leave but not recreation leave. These entitlements will be recognised by the ACT public service.

#### Amendment (8)

##### Subsection 3(1) (definition of ACT office)

Schedule 5 of the 1988 Act is amended to include a definition of "ACT office" in subsection 3(1) of the RT Act. An "ACT office" is an office specified in paragraphs 3(4)(fc-fh) of the RT Act or an office specified in subsection 73(1) of the *Australian Capital Territory (Self Government) Act 1988*.

##### Subsection 3(3)

Schedule 5 of the 1988 Act included an amendment to subsection 3(3) of the RT Act. This amendment commenced on 11 May 1989. For technical drafting reasons this amendment has been repeated.

##### Subsection 7(6)

Schedule 5 of the 1988 Act is further amended by amending subsection 7(6) of the RT Act to provide that the Remuneration Tribunal must give the Minister a copy of every determination made by the Tribunal except those relating to an ACT office which must be given to the Chief Minister of the ACT, pursuant to new subsection 7(6A).



Subsection 7(7)

) Schedule 5 of the 1988 Act is further amended to include an amendment of subsection 7(7) of the RT Act. This amendment removes the current role of the Commonwealth Parliament in disallowing determinations made in relation to ACT offices.

After subsection 7(8)

| Schedule 5 of the 1988 Act is further amended by inserting a new subsection 7(8A) which provides that the Legislative Assembly of the ACT may within 30 sitting days after the determination is received by the Chief Minister, pass a resolution disapproving of the determination such that, if the determination has not come into operation, it does not come into operation and if the determination has come into operation, it ceases to have any force or effect after the day on which the resolution is passed.



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