

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

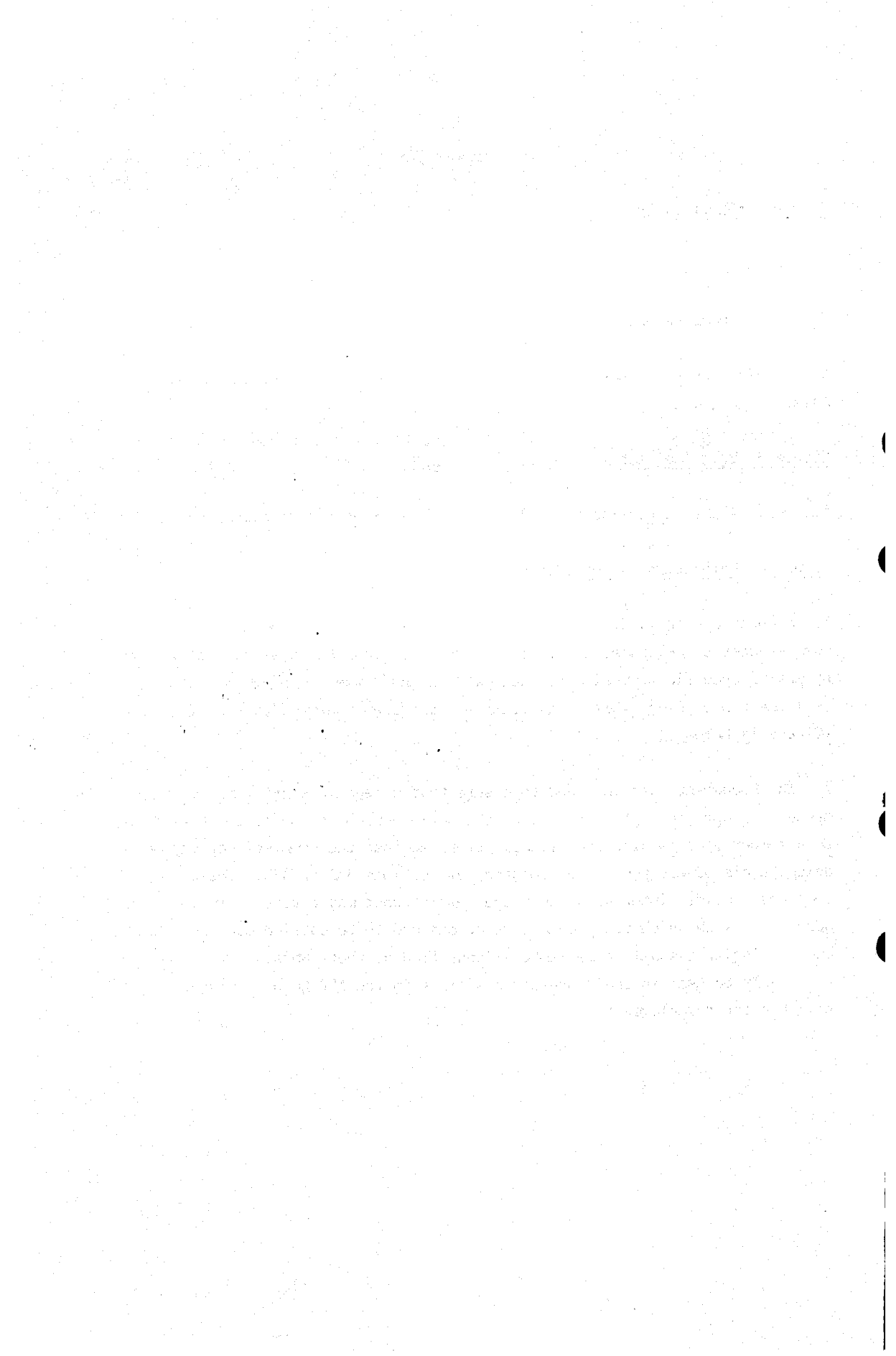
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OUTLINE

1. The Australian Federal Police Amendment Bill 1985, which amends the Australian Federal Police Act 1979 (the Act) has two principal purposes:

- (a) To provide for the efficient and economical use of Australian Federal Police (AFP) personnel, including provision for redeployment and management initiated retirement; and
- (b) to make other amendments to the Act in the light of experience, and following the recommendations of a Joint Management Review of AFP administration completed in 1984, namely:
 - . to vest in the Commissioner the powers of a Secretary to a Department in so far as those powers relate to Public Service staff employed in the Office of the Australian Federal Police;
 - . to provide that regulations may be made for the re-appointment to the AFP of members who have retired on grounds of invalidity but have since regained their health, and for the interview of a member by the Appeals Board prior to his/her departure from Australia to take up duty at an overseas post.

2. While it is not possible at this stage to estimate the use likely to be made of the retirement provisions, there is no reason to suppose that the financial impact of the Bill will be other than minimal.



NOTES ON CLAUSES

Clause 1: Short title

3. Formal.

Clause 2: Commencement

4. Provides that the Act will come into effect upon receiving the Royal Assent.

Clause 3: Principal Act

5. Defines the Australian Federal Police Act 1979 as the Principal Act.

Clause 4: Delegation by Commissioner

6. Amends section 15 of the Principal Act, which currently permits the Commissioner to delegate any of his powers other than the power of delegation, by making specific provision for delegations under the redeployment and retirement provisions which constitute a significant part of this Bill (Clause 14 below).

7. The amendments are intended to ensure that delegations are limited in a manner appropriate to the gravity of the action which may be taken in relation to a member. It is also specifically provided that the Commissioner may not delegate his powers under the proposed new sections 38A or 38B. These sections provide, inter alia, that the Commissioner may publish principles in accordance with which redeployment functions are to be carried out, and that the Commissioner shall cause members identified as those whose services cannot reasonably be used in their present positions in the AFP to be declared eligible for redeployment.

Clause 5: Public Service support staff

8. Amends section 16 of the Principal Act to vest in the Commissioner all the powers of, or exercisable by, a Secretary to a Department under the Public Service Act 1922. The provision of these powers relates only to those Public Service staff referred to in sub-section 16(1), namely those hitherto appointed or employed under the Public Service Act to provide administrative and other support to the AFP in a branch of the Department of the Special Minister of State known as the Office of the Australian Federal Police.

Clause 6 (as above)

9. As a consequence of the provision made under Clause 5 above, a new section 16A is necessary to provide for the transfer of offices from the Department of the Special Minister of State to a new 'Department' in relation to which the Commissioner has the powers of a Secretary.

Clause 7: Absence, &c., of Commissioner or Deputy Commissioner

10. Corrects a drafting error in section 19(1A). There are now two Deputy Commissioners of the AFP.

Clause 8: Determination of numbers by Minister

11. Amends section 24 of the Principal Act by removing the requirement that the Minister consider the advice of the Public Service Board when determining rank numbers in the AFP.

Clause 9: Commissioned police officers; Clause 10: Non-commissioned police officers

12. Correct drafting oversights when the Principal Act was amended in 1984 and the AFP became a 'position' rather than a 'rank' based organisation. Provision is also made to exclude members of the AFP who are the subject of a redeployment declaration from normal transfer arrangements. Special provision is made for such members - see Clause 14 below.

Clause 11: Interpretation of Part V

13. Inserts into section 29 definitions necessary for the purposes of subsequent amendments.

Clause 12: Re-appointment after secondment or special leave of absence

14. As with Clauses 9 and 10 above, corrects drafting oversights.

Clause 13: Resignation

15. Amends paragraph 37(1)(b) to accommodate the reordering of section 40 which is the subject of Clause 15 below.

Clause 14: Various (see paragraph 17 below)

16. Repeals sections 38 and 39 of the Principal Act, which deal with retirement and retrenchment, replacing them with a comprehensive scheme for the efficient and economical use of AFP staff, including redeployment and management initiated retirement. Except to the extent necessitated by reason of the particular character of the AFP as a disciplined force, the proposed amendments derive directly from the provisions of the Commonwealth Employees (Redeployment and Retirement) Act 1979 (the CERR Act). The principal variations from the CERR Act are that redeployment is possible only within the AFP, and that the Appeals Board is of recommendatory rather than determinative character. Provision is already made in regulations under the Principal Act for the early voluntary retirement of members of the AFP.

17. The proposed amendments are as follows:

Section 38: Efficient and economical use of staff

- provides that the Commissioner shall, to the greatest extent practicable, ensure that the AFP makes efficient and economical use of its members and that members in excess of efficient and economical requirements, members incapable of performing their present duties and members who are inefficient or not qualified shall be redeployed (sub-section 38(1));
- provides an exhaustive definition of inefficiency, failure in the performance of present duties and lack of qualification (sub-sections 38(2)-(5)).

Section 38A: Approved criteria and procedures, &c.

- provides that the Commissioner may publish notices setting out administrative procedures to be followed in facilitating the fulfilment of his obligations under section 38 and the principles in accordance with which his functions under section 38C are to be performed.

Section 38B: Members eligible for redeployment

- provides that the Commissioner shall declare in writing the eligibility of a member for redeployment where that member is identified as one whose services are not being used efficiently and economically, that a copy of the declaration shall be served on the member within 28 days and that the declaration shall contain a statement of reasons for its making.

Section 38C: Redeployment of members

- provides, subject to the member's rights of appeal, that the Commissioner shall take such action as he considers reasonable to transfer a member declared eligible for redeployment to another position within the AFP. In considering redeployment, the Commissioner is required to have regard to matters related to the efficient operation of the AFP, to the feasibility of re-training the member, and to the educational and other qualifications of the member.

Section 38D: Members who cannot be redeployed

- provides that if, in the opinion of the Commissioner, redeployment of a member in accordance with section 38C is not reasonable or practicable, he shall issue a certificate to that effect, containing reasons for its issue, and serve a copy upon the member within 28 days.

Section 38E: Invalidity precluding redeployment

- provides, subject to the member's rights of appeal, that the Commissioner may issue a certificate certifying that he is satisfied that a member who has not been redeployed in accordance with section 38C should be retired from the AFP on the basis that invalidity renders that member incapable of performing his duties.

Section 38F: Appeals

- provides that a member may appeal against the making of a declaration under section 38B, the issue of a certificate under section 38D or 38E, or redeployment action taken under section 38C. The Appeals Board may recommend confirmation, revocation or setting aside of the declaration, certificate or action, as appropriate. Reasons for its decision are to be provided to all parties within 28 days.

Section 38G: Powers of Commissioner on determination of appeals

- provides that the Commissioner may, after considering the recommendation and reasons given by the Appeals Board, confirm or revoke his original decision.

Section 38H: Retirement of members who cannot be redeployed

- provides, subject to the member's rights of appeal, that the Commissioner may retire from the AFP a member in relation to whom a certificate has been issued under section 38D or 38E.

Section 39: Retirement on ground of age

- provides that a member of the AFP shall retire upon attaining 60 years of age. The 60 year retirement age was formerly provided in sub-section 38(1).

Section 39A: Certain information not to be included in statements of reasons, &c.

- provides that where a statement is required under sections 38B, 38C, 38D, 38E, or 38G, the Commissioner or the Appeals Board may decide to exclude information of a medical or psychiatric nature in cases where its inclusion might adversely affect the physical or mental health or well-being of the member concerned. The exclusion must be noted in the statement, and the excluded material made available to a medical practitioner nominated by the member.

Clause 15: Regulations may provide for certain other terms and conditions

18. Amends the power in section 40 to make regulations. Provision is made for regulations to establish an Appeals Board to hear both promotion appeals (as at present) and appeals arising from redeployment and retirement action. Provision is also made for regulations permitting:

- . the reappointment to the AFP of a now healthy member who had formerly retired on the basis of invalidity; and
- . the interview of AFP members about to leave for duty overseas and the use of a record or report of that interview in later promotion appeals. Such regulations are necessary in order to minimise the disadvantage suffered by a member who might otherwise be unable to appear before the Board while posted overseas.

Clause 16: Proof of appointment, &c.

19. Amends section 68 to permit the Commissioner to make a negative certification as to whether or when a person was a member of the AFP.

Clause 17: Repeal of section 68A

20. Repeals section 68A of the Principal Act. This provision is now unnecessary by virtue of section 87 TA of the Public Service Act 1922.

Clause 18: Accrued leave

21. Consequent upon Clause 17.

Clause 19: Saving

22. Self-explanatory.

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Clause 20: Transitional

23. Transitional provisions ensuring that promotion appeals lodged and redeployment action commenced prior to the commencement of this Act are finalised under the conditions existing before commencement.

Clause 21: Principal Act; Clause 22: Regulations

24. Delete references in the CERR Act rendered superfluous by Clause 14 above.

Clause 23: Principal Act; Clause 24: Commencement; Clause 25: Amendment of Schedule

25. Delete now superfluous and unproclaimed amendments to the Principal Act made in the Statute Law (Miscellaneous Provisions) Act (No 2) 1983.

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