

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMONWEALTH BANKS AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

Circulated by authority of the Treasurer, the Honourable John Howard, MP



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GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The main purpose of this Bill is to amend the Commonwealth Banks Act 1959 to give effect, with respect to the Commonwealth Banking Corporation, the Government's policy on earlier retirement, both voluntary and management-initiated.

The Commonwealth Employees (Redeployment and Retirement) Act (CE(RR) Act), which was proclaimed to come into operation on 6 February 1981, makes provision with respect to the redeployment and retirement of Commonwealth employees, including those of prescribed Commonwealth authorities. It is open to any Commonwealth authority, such as the Commonwealth Banking Corporation, to seek to become a prescribed Commonwealth authority for the purposes of that Act thus bringing the authority within the scope of the redeployment provisions of the Act, and the provisions for management-initiated retirement and for voluntary retirement by officers who have attained the age of 55 years.

The Commonwealth Banking Corporation does not wish to avail itself of this option. This is in the light of its role as an integral part of the competitive banking and finance industry. It is considered that the Corporation already has, within its existing staffing policies and practices, effective internal redeployment arrangements that are consistent with the spirit of the redeployment provisions of CE(RR) Act. In addition, in the light of the sensitive and confidential nature

of banking business including the Corporation's international contacts, it is felt important by the Corporation that it not only retain but be readily seen to retain its statutory independence in the control and management of its affairs.

Nevertheless the Corporation, with the support of the Commonwealth Bank Officers' Association, sought the Government's agreement to introduce voluntary early retirement from age 55 years for male officers of the Corporation by appropriate amendments to the Commonwealth Banks Act, (female officers already have this right).

Accordingly, after consideration, the Government decided to introduce amendments to the Commonwealth Banks Act to provide for age 55 retirement for all Corporation staff on the basis that, as appropriate, the Act also be amended to bring it into line with relevant provisions of the CE(RR) Act. This Bill implements that decision.

The nature of the proposed amendments has been discussed with the Commonwealth Banking Corporation and the Commonwealth Bank Officers' Association and are fully acceptable to them.

The main provisions of the Bill - clauses 6 and 9 - will provide minimum and maximum retiring ages of 55 and 65 years for all Corporation staff and specify the grounds on which an officer may be redeployed within the Corporation Service or be retired by management. The Bill will provide an officer with the right to appeal against any action taken by the Corporation to retire him.

The opportunity is also being taken with this Bill to amend section 24 of the Commonwealth Banks Act relating to disclosure of interests by Board members and to effect certain other minor amendments.

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CLAUSE 1 - SHORT TITLE ETC

Self-explanatory.

Clause 2 - Disclosure of Pecuniary Interest

Section 24 of the Principal Act requires a member of the Commonwealth Banking Corporation Board to disclose any direct or indirect interest in a contract made or proposed to be made by the Commonwealth Banking Corporation or one of its constituent banks at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.

The opportunity is being taken to amend this provision to bring it into line with standard provisions that are being incorporated in statutory authority legislation to give effect to the Government's adoption of the relevant recommendations of the Committee of Inquiry concerning Public Duty and Private Interest, otherwise known as the Bowen Committee.

The proposed new section 24 substituted by this clause will require (in sub-sections (1) and (2)) a Board member to disclose any direct or indirect pecuniary interest in any matter coming before the Board or an Executive Committee of the Board of which he is a member, in addition to the present requirement to disclose his interest in a relevant contract with the Corporation or a constituent bank.

Proposed sub-section (3) repeats existing sub-section 24(3) requiring such a disclosure to be recorded in the minutes of the Board or the Executive Committee.

Proposed sub-section (4) will provide that a member shall not be present when the Board or Executive Committee considers a matter in which he has an interest or participate in any decision of the Board or Executive Committee with respect to the matter unless the disinterested members or the Treasurer determines otherwise. This provision follows a particular recommendation of the Bowen Committee.

Proposed sub-section (5) will preclude a member with an interest from participating in any discussion on, or in the making of, a determination referred to in sub-section (4).

CLAUSE 3 - INTERPRETATION

This clause deletes the definition of 'the Disciplinary Appeal Board', which will be re-constituted as 'the Tenure and Disciplinary Appeal Board', and adds to section 87 of the Principal Act a definition of the latter Board. It also adds a definition of "superannuation rules" which are referred to elsewhere in the Bill.

CLAUSE 4 - NO WORK AS DIRECTED - NO PAY

This clause will effect technical amendments to section 89A of the Principal Act that was inserted by section 53 of the Public Service and Statutory Authorities Amendment Act 1980. The revised sub-section (11)

of section 89A includes, in addition to the present reference to service for the purposes of the Superannuation Act 1976, a reference to service for the purposes of the superannuation rules made under sub-section 110(2) of the Principal Act. The revised paragraph (11) also incorporates some purely drafting changes.

CLAUSE 5 - PROMOTIONS APPEAL BOARD

The Attorney-General's Department has advised that section 101 of the Principal Act providing for the appointment of the Chairman of the Promotions Appeal Board does not empower the Governor-General to appoint the Chairman for a specified period. Sub-clause 5(1) provides for section 101 to be amended to allow an appointment to that office to be made by the Governor-General for such period, not exceeding 3 years, as is specified in the instrument of his appointment. It also provides for the appointee to be eligible for re-appointment.

Sub-clause 5(1) also makes provision enabling the Governor-General to terminate an appointment of the Chairman for the reasons specified and for the office-holder to resign voluntarily.

Sub-clause 5(2) provides that the holder of the office of Chairman of the Promotions Appeal Board immediately before commencement of these amendments shall continue to hold office during the pleasure of the Governor-General.

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CLAUSE 6 - TENURE OF OFFICE

Sub-section 102(1) of the Principal Act provides for minimum and maximum retiring ages of 60 and 65 years, respectively, for male officers of the Commonwealth Banking Corporation Service, and 55 and 60 years, respectively, for female officers. The effect of paragraphs (a) and (c) of this clause will be to reduce the minimum retiring age for male officers to 55 years and to increase the maximum retiring age for female officers to 65 years. Amendment will thus bring the minimum and maximum retiring ages for all Corporation officers into line at 55 and 65 years, respectively

Sub-section 102(2) of the Principal Act provides that, where an officer continues in the Service after the age of 60 years, in the case of a male officer, or 55 years, in the case of a female officer, the officer may at any time before reaching maximum retiring age be retired by the Corporation from the Service. Paragraph (b) of this clause amends the existing provision to provide for management-initiated redeployment, where this is reasonable and practicable, or the retirement of an officer (male or female) who has reached the minimum retirement age of 55 years. Under this provision the Corporation will be empowered to redeploy or retire an officer on medical grounds or where for any other reason the officer is no longer performing his duties in such a manner as to permit the Corporation to make efficient and economical use of his services. The latter ground differs from the corresponding provision in

proposed paragraph 106(1)(b) applicable to officers under the age of 55 years. The Corporation believes this provision, which accords with the spirit of the CE(RR) Act, makes business sense in the commercial environment in which it operates, as it will enable the Corporation to retire an officer who has attained the age of 55 years and who is no longer carrying out his duties in such a way as to enable the Corporation to use his services efficiently and economically.

Officers will have a right of appeal against any action taken under the provisions of this section and if subsequently retired will receive benefits as prescribed.

CLAUSE 7 - EXCESS OFFICERS

This clause provides for the omission of sub-section 103(3) of the Principal Act, which currently provides that an officer retired from the Corporation Service on grounds of redundancy under section 103 shall be given at least one month's notice or paid salary in lieu of notice. Clause 14 makes provision instead for officers retired under section 103 to be paid such benefits as prescribed.

CLAUSE 8 - REPEAL OF DIVISION HEADING

By removing the heading "Division 5 - Dismissals and Punishments" from the Principal Act, this clause recognises that section 106 of the Principal Act as amended by this Bill is more appropriately included under Division 4 - Tenure of Office.

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CLAUSE 9 - RETIREMENT ETC OF OFFICERS ON GROUNDS OF INEFFICIENCY,
INCAPACITY ETC

Sub-section 106(1) of the Principal Act provides that if an officer appears to the Corporation to be inefficient or incompetent or unfit to discharge or incapable of discharging his duties, the Corporation may retire him from the Corporation Service or do one or more of the following things - redeploy him within the Service; reduce his salary; or withhold a salary increment otherwise due to him.

This clause replaces the existing provision with a new provision that will apply only to officers under the age of 55 years. (As explained under clause 6, the new sub-section 102(2) will be the corresponding provision applicable to officers who have attained the age of 55 years.)

In this proposed sub-section 106(1) the grounds on which the Corporation may take action to redeploy or retire an officer who is unfit to discharge or incapable of discharging his duties are basically the same as those in the existing provision but are restated more clearly to distinguish between medical grounds and those of inefficiency and incompetence. The latter two grounds are expressed to relate to causes outside the officer's own control. This is to distinguish the provision

from existing section 107 that empowers the Corporation to take certain disciplinary action for misconduct in various circumstances including where an officer has been inefficient or incompetent by reason of causes within his own control.

The clause also provides for the existing powers of redeployment and retirement in sub-section 106(1) to be reordered to require the Corporation to explore all the options for redeployment and the like before action is taken to retire an officer from the Corporation Service. This is in keeping with the intentions of the Commonwealth Employees (Redeployment and Retirement) Act 1979.

Existing sub-section 106(2) remains in force and will have the effect of requiring that an officer (ie under the revised sub-section 106(1), an officer under the age of 55 years) retired under new sub-section 106(1) be given one month's notice or salary in lieu of notice.

New sub-section 108(1) will retain an officer's right of appeal against any action taken under the provisions of the section.

CLAUSE 10 - INSERTION OF DIVISION HEADING

This clause provides for the insertion of a new heading "Division 5 - Discipline" covering section 107 of the Principal Act.

CLAUSE 11 - INSERTION OF DIVISION HEADING

This clause provides for a new Division heading - "Division 5A - Appeals to Tenure and Disciplinary Appeal Board" - covering sections 108 and 109 of the Principal Act as amended.

CLAUSE 12 - APPEALS

This clause amends sub-section 108(1) to provide for rights of appeal against action taken by the Corporation to redeploy or retire an officer under revised sub-section 102(2) (see sub-clause 6(b)) or to retire an officer under sub-section 103(2) (excess officers) and maintains the existing rights of appeal under revised section 106 and sub-section 107(1). Hitherto, an officer has not had a right of appeal against action taken to retire him under existing sub-sections 102(2) and 103(2).

CLAUSE 13 - TENURE AND DISCIPLINARY APPEAL BOARD

Sub-clause 13(a) provides that the Disciplinary Appeal Board established by virtue of sub-section 109(1) of the Principal Act will continue in existence under the name "Tenure and Disciplinary Appeal Board".

Sub-clause 13(b) - replaces existing sub-section 109(3) providing for the Chairman of the Disciplinary Appeal Board to hold office on such terms and conditions as the Governor-General determines with a new sub-section providing for the Chairman of the newly-constituted Tenure

and Disciplinary Appeal Board to hold office for such period, not exceeding 3 years, as is specified in the instrument of his appointment and, as at present, on such terms and conditions as the Governor-General determines. Provision is also made for the appointee to be eligible for re-appointment.

Sub-clause 13(b) also adds two new sub-sections (3AA) and (3AB) respectively enabling the Governor-General to terminate a Chairman's appointment for specified reasons and making specific provision for such office-holder to resign voluntarily.

Sub-clause 13(c) adds a new sub-section (3B) to provide specifically that an officer appointed by the Managing Director of the Corporation as a member of the Tenure and Disciplinary Appeal Board holds office during the Managing Director's pleasure.

CLAUSE 14 - BENEFITS

This clause provides for a new section 110A to be inserted in the Principal Act, sub-section(1) of which will authorise the making of regulations to provide for the payment, in such circumstances as are prescribed, to an officer who is retired from the Service under paragraph 102(2)(b), or sub-section 103(2), of such benefit, whether by way of lump sum or otherwise, as may be prescribed.

The new sub-section(2) will allow the regulations to provide for the payment of different benefits by way of lump sum in respect of different classes of officers that are retired by the Corporation under the two provisions referred to in sub-section 110A(1).

In the case of an officer between the ages of 55 and 60 years retired under sub-section 102(2) it is proposed to provide in the regulations for the payment of a lump sum benefit corresponding to the benefit payable to an officer retired from the Australian Public Service under the corresponding provision of the Commonwealth Employees (Redeployment and Retirement) Act 1979. Consideration is being given to the nature of any benefit that may be payable in the case of retirements under sub-section 103(2).

The new paragraph (3)(a) will authorise the regulations to make provision for an officer entitled to receive a lump sum benefit under the regulations to elect to have a lump sum benefit converted to a pension benefit and to provide for the pension benefit to be paid to him in association with any pension benefit payable to him under the Corporation's superannuation rules.

New paragraphs 3(b),(c) and (d) and sub-section (4) will permit the regulations to make appropriate machinery provisions for the payment of any such pension benefits.

CLAUSE 15 - FORMAL AND CONSEQUENTIAL AMENDMENTS

This clause, through the Schedule, will effect certain formal amendments to the Principal Act in accordance with modern drafting practice, and certain consequential amendments arising from the reconstitution of the Disciplinary Appeal Board as the Tenure and Disciplinary Appeal Board.

CLAUSE 16 - TRANSITIONAL PROVISION WITH RESPECT TO TENURE AND DISCIPLINARY APPEAL BOARD

Sub-clause 16(1) provides that anything done by the Disciplinary Appeal Board before the commencement of the amending Act has effect after the commencement as if it had been done by the Tenure and Disciplinary Appeal Board.

Sub-clause 16(2) provides that notwithstanding the amendments by paragraph 13(b) to section 109(3) of the Principal Act, the holder of the office of Chairman of the Disciplinary Appeal Board immediately before the commencement of the amending Act shall continue as Chairman of the Tenure and Disciplinary Appeal Board during the pleasure of the Governor-General.

Sub-clause 16(3) provides that the officer appointed by the Managing Director of the Corporation who held office as a member of the Disciplinary Appeal Board immediately before the commencement of the amending Act shall continue to hold office as a member of the Tenure and Disciplinary Appeal Board during the pleasure of the Managing Director.

Sub-clause 16(4) provides that the person appointed by the officers of the Corporation Service who held office as a member of the Disciplinary Appeal Board immediately before the commencement of the amending Act shall continue to hold office as a member of the Tenure and Disciplinary Appeal Board for the remainder of the term for which he was appointed to the Disciplinary Appeal Board.

Sub-clause 16(5) is self-explanatory.

SCHEDULE

The Schedule will effect formal and consequential amendments as explained under clause 15.



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