

1979

COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

COMMONWEALTH EMPLOYEES
(REDEPLOYMENT AND RETIREMENT)
BILL 1979
EXPLANATORY MEMORANDUM

(Circulated by the Minister for
Employment and Youth Affairs and
Minister Assisting the Prime Minister
in Public Service Matters, the
Honourable R.I. Viner, M.P.)

COMMONWEALTH EMPLOYEES (REDEPLOYMENT
AND RETIREMENT) BILL 1979

GENERAL OUTLINE.

The Bill makes provision for the introduction of a scheme of Redeployment and Retirement in the Public Service and, where prescribed, in other areas of Commonwealth employment.

The main features of the scheme (along similar lines to the scheme under the Commonwealth Employees (Redeployment and Retirement) Bill 1976) are:-

- . It imposes an obligation on managers to:
 - identify staff who cannot be efficiently utilized
 - declare such staff as eligible for redeployment.
- . The grounds for such action relate to
 - excess numbers of staff
 - invalidity
 - other reasons e.g. loss of licence, limited efficiency.
- . The Public Service Board is required to attempt to redeploy such staff.
- . In the event staff cannot be redeployed, provision is made for retirement with compensation in some cases.

- . Staff have the right of appeal against:-
 - identification as a declared employee
 - action taken by way of redeployment
 - proposed retirement action.
- . The Tribunal is required to have regard to procedures and principles notified by the Board or relevant authority as applying to such actions.

The Bill incorporates significant amendments to the earlier Bill in the area of appeal rights following discussions with staff organisations.

The Bill also makes provision for the introduction of voluntary retirement at age 55 with reduced benefits under the Superannuation Act.

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NOTES ON CLAUSES

The original Commonwealth Employees (Redeployment and Retirement) Bill was introduced in Parliament late in 1976 and the then Minister Assisting the Prime Minister in Public Service Matters (Mr Street) indicated that the Bill would lie on the table so as to enable interested parties to put forward views. Ultimately, the Bill lapsed when Parliament was prorogued early in 1977. Since then there have been detailed discussions between the Public Service Board and the peak employee councils on possible changes to the 1976 Bill and the present Bill incorporates a number of changes. In particular,

- . grounds for redeployment are required to be set out with greater particularity
- . an appeal tribunal is established, and appeal rights and procedures are set out in the Bill
- . the redeployment powers of the Public Service Board, particularly in 'excess numbers' situations, are outlined and clarified.

Detailed notes on the Bill follow hereunder:

Clause

1. Formal: short title.
2. Provision is made for clause 20 to come into operation on assent. Clause 20 is necessary to deal with legal difficulties arising in a particular situation (see notes on clause 20). The remaining provisions are to be proclaimed when regulations and other instruments have been prepared.
3. A 'declared employee' is defined as meaning an employee who has, in effect, been found to be excess to requirements by the Department or authority in which he is employed, and is therefore eligible for redeployment. The definitions of 'Department', 'employee', 'Permanent Head', 'redemption declaration' and 'Tribunal' are all formal. The term 'prescribed Commonwealth authority' is central to those parts of the Bill which provide for extension of the scheme in the Bill to Commonwealth employment beyond the

Australian Public Service strictly so-called. The term is defined very broadly (see parts (a)-(d) of the definition) so as to enable Commonwealth statutory authorities, public companies controlled by the Commonwealth etc. to come within the scheme. However, specific regulations must be made in order to apply the scheme to any particular authority. Sub-clause 3(3) provides that such regulations can only be made with the consent of the authority concerned.

4. Formal: application of Act

5. This clause defines (subject to exclusionary provisions in clause 6) the various classes of persons to whom the Bill applies. Specifically sub-clause 5(1) applies the Act to permanent staff of the APS and authorities, and to temporary employees with one year's service. However, sub-clause 5(2) excludes from the Bill: persons remunerated by fees etc. or employed in an honorary capacity; probationers; and persons employed for a fixed term or for the duration of a particular project (the general application of the comprehensive redeployment and compensation arrangements in the Bill cannot be justified for these staff categories).

6. This clause provides for the variation, by declaration by the Governor-General, of the general inclusions and exemptions in clause 5. For example, application of the Bill to fixed-term employees might be appropriate where a long fixed term arrangement has been unilaterally foreshortened; conversely, exemption might be appropriate where for example a particular staffing category is employed under the terms and conditions of a relevant State award.
- Sub-clause (3) would enable particular categories to be removed from the jurisdiction of the Bill, for example invalidity cases arising in a particular authority where these cases are more appropriately dealt with by the authority.
7. This clause is the focal point of the redeployment and compulsory retirement parts of the Bill. It sets out the basic objectives required to be followed by Departments and authorities in the staffing of their particular organisations. These objectives are, in effect, to:

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- . use staff as efficiently and economically as possible-para.7(1)(a)
- . where practicable, redeploy any excess staff rather than retire them - para. 7(1)(b). This paragraph also incorporates the various grounds upon which employees may be declared to be eligible for redeployment/retirement. The first two grounds are quite specific, namely:
 - . excess number situations - sub para. 7(1)(b)(i).
 - . invalidity cases - sub para. 7(1)(b)(ii).

The third ground is 'for any other reason'. Important changes from the 1976 Bill are that any such reasons must be specifically prescribed in regulations, and that (sub-clause 7(2) refers) there must be consultation with employee organisations before any such regulation is made (it is intended to prescribe the four peak employee councils for this purpose). Subject to discussions with peak councils in due course, it is expected that the 'reasons' to be prescribed would cover such matters as loss of licence/qualifications, and cases of limited efficiency.

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8. This clause gives the Board a regulatory and co-ordinating role in relation to the procedures to be followed in Departments, and by authorities, in pursuance of the basic objectives set out in clause 7. The Board will specify procedures for the Public Service, while other Commonwealth authorities will be required to consult with the Board before specifying their own procedures.

The various matters specified in sub-clause 8(3) are designed to ensure that the statutory provisions are, where relevant, applied uniformly and in appropriate circumstances.

Sub-clause 8(6) exempts First Division officers from the operation of Clause 8: they are dealt with separately in clause 18.

9. This clause imposes on Permanent Heads of Departments, and on authorities, a basic responsibility to ensure that their staff are used as efficiently and economically as possible: there is, in sub-paras. 9(1)(b)(i) and

9(2)(b)(i) an appropriate linkage with the procedures that have been specified pursuant to clause 8.

Where the Permanent Head or authority cannot use staff, they are obliged by sub paras. 9(1)(b)(ii) and 9(2)(b)(ii) to declare those staff to be eligible for redeployment.

The purpose of sub-clause 9(3) is to ensure that the redeployment and retirement provisions of the Bill are not used where disciplinary action (under eg section 55 of the Public Service Act) is the appropriate course.

10. This is the point where the Public Service Board's redeployment role commences: it is mandatory for Departments and authorities to notify the Board of declared employees (the employee must also be informed). It also provides under sub-clause (3) for appropriate notification where the appeal Tribunal substitutes another employee for one already identified (see clause 15).

- 11(1) This sub-clause confers on the Board its basic responsibility to try and redeploy declared employees within some other area of Commonwealth employment.
- 11 (2) In the course of exercising this responsibility, it may be necessary for the Board to formulate principles that it will apply, eg that overall efficiency requires that certain types of jobs should always be filled by the best person available, or that certain jobs are to be reported as not available for redeployment (eg because a potential redundancy situation is looming in that area). This sub-clause enables the Board to specify such principles. Once the principles are determined, sub-clause 11(3) requires the Board to act in accordance with them.
- 11 (4) In addition to any principles determined under sub-clause 11(2) this sub-clause specifies a number of matters to which it would be reasonable for the Board to have regard when exercising its redeployment function. Paragraph 11(4)(b) implements a suggestion of the peak employee councils, namely that the feasibility of retraining any declared employee should be considered.

- 11 (5) This is a formal provision, ensuring that an employee can fully exercise appeal rights against a declaration made in respect of him.
- 11 (6) Formal provision: action to be taken by the Board at the conclusion of the redeployment phase. Where the employee cannot be redeployed, the case is referred back to the Permanent Head or authority (for subsequent action, see clause 19.)
12. This clause gives the Board a number of specific powers which it can exercise in relation to redeployment to or within the Australian Public Service. The Board is given broad-ranging appointment, transfer, etc. powers, and other regulatory powers, relating to vacant Public Service offices.
13. This clause gives the Board, and Commonwealth authorities, powers in relation to the redeployment of declared employees to or within such authorities. Specifically authorities may be given, through regulations, appropriate redeployment powers, whilst the Board is given an overriding power to redeploy persons to particular authorities. In relation to the Board's power, it should be noted that:

- . the power is exercisable only in 'excess numbers' cases - sub-clause 13(5)
- . authorities must be consulted before redeployment action is taken - para. 13(1)(b) and sub-clause 13(3)
- . the Board may require data from authorities on vacancies etc. - para. 13(1)(c).

14. The purpose of this clause is to enable a 'short circuiting' of the redeployment procedures that would otherwise apply in cases involving invalidity and it is clear that retirement is the only practicable course: it may be in the employee's interest that retirement action not be delayed (however, the employee will still have appeal rights unless he elects to waive them).

15(1) The basic appeal rights are conferred by this sub-clause. Appeals can be made against:

- . the decision of a department or authority to declare an employee to be eligible for redeployment
- . particular redeployment action proposed to be taken by the Board (eg where reduction in salary would be involved)

- . a decision by the Board that redeployment is not practicable.

15(2) This sub-clause specifies the basic powers of the tribunal: in effect, it will be able to exercise a 'blocking' role by preventing particular action from being taken (in this eventuality it would be a matter for the Department/authority/Board, as appropriate, to determine what further action, if any, should be taken - sub clauses 15(6),(8),(9) and (11) refer).

15(3) These sub-clauses require the tribunal to apply the
- (4) procedures/principles that the original decision-maker was required to apply, and to have regard to matters to which the decision-maker was required to have regard.

15 (5) Where an employee has been declared as eligible for
- (6) redeployment on 'excess numbers' grounds, these sub-clauses will enable other employees from the same class to be joined as parties to the appeal. Thus if, eg, 20 employees of a group of 60 have (after required procedures have been followed) been declared to be excess, it will be possible for the tribunal to, in effect, review the original group of 60.

Otherwise, there could be an interminable series of appeals where, e.g., one or more of the 20 appeals is successful and others from the remaining 40 are declared in lieu.

15 (7) The purpose of this sub-clause is to provide a formal basis for 'feed-back' from the tribunals to the decision-making authorities where, eg, there is some procedural aspect arising from the particular appeal which ought to be drawn to attention: It is intended that key points in any such reports will, as appropriate, be brought to the attention of relevant staff organisations.

15 (11) The sub-clause requires the Tribunal to give reasons for its decision.

16. This clause provides for the formal constitution of appeal tribunals - to be known as Commonwealth Employees Redeployment and Retirement Appeal Tribunals - and for the procedures of these tribunals. Specifically, the tribunals will comprise:

- . independent chairmen appointed by the Governor-General
- . nominees of the decision-making authorities

- nominees to represent employees (on the basis of discussions with representatives of the peak employee councils, it is envisaged that these tribunal members will be nominated jointly by all peak councils).
17. The purpose of this clause is to reduce (for most Commonwealth employees) the minimum voluntary retiring age from 60 to 55. As is already provided in the Superannuation Act, a reduced pension would apply where a person retires at an early age (e.g. approx. 36% of final salary at 55, as compared with approx. 45% at 60). Provision is made for other retirement ages to be fixed by regulations for particular classes of employees should this be appropriate.
18. This clause provides for compulsory retirement (by the Governor-General on report by the Board) of First Division officers of the Australian Public Service. The criteria are modelled on the presently applicable provision, namely section 67 of the Public Service Act.

19. In a procedural sense, this clause follows on from sub-clause 11(6): where the Board cannot redeploy declared employees, it will be the duty of the Permanent Head or authority to retire those employees (unless there are duties now available to which the employees can be redeployed).
20. The purpose of this clause is to clarify an uncertain legal situation which has recently come to notice. Where a decision is taken in principle that an APS officer should be retired on medical grounds, the long-standing practice has been to 'unattach' that officer so that, pending normal retirement action (the timing of which takes account of sick-leave entitlements), action can be taken to fill the officer's office. Legal advice is that such 'unattachment' action should be based on a specific statutory power. This clause provides this power in relation to First Division Officers.
21. This clause is analogous to Clause 20 except that it applies to Second, Third and Fourth Division officers and can only be utilized once the other provisions of the Bill relating to identification, appeals etc. have been fulfilled.

22. This clause provides for the basic maximum retirement age, which will be 65 unless some other age is prescribed. Provision is made for the continuation of employment beyond the normal maximum retirement age where this is in the Commonwealth's interests in a particular case, and where the employee consents to such action (this will not apply to 'non-tenured' Permanent Heads, whose appointments are for fixed terms).

23. This clause provides the basis for making regulations under which those employees who have been compulsorily retired for reasons other than invalidity may be paid special benefits. The clause also provides the basis for financing these benefits. It is intended that regulations will be made which will:

- . provide for benefits being paid to persons retired by reason of, eg, loss of qualifications, limited efficiency of persons aged 55-60 (other cases will be covered by any applicable provisions of the Superannuation Act and arbitral determinations)
- . provide, in such cases, for lump sum payments equivalent to two months' salary for each foregone year of service between 55 and 60 (ie maximum of 10 months)

- . enable those lump sum payments to be converted to a form of pension, payable in conjunction with pension entitlements under the Superannuation Act
- . proscribe the conversion of lump sums to pensions benefit where persons do not take any benefits under Superannuation Act as pension.

Sub-clause (4) provides the basis for financing benefits payable to employees and provided under regulations.

Sub-clauses (6) - (9) provide arrangements for the recovery by the Commonwealth of the cost of providing pensions to former employees of prescribed Commonwealth authorities.

24. This clause has two purposes:

- . to ensure that inconsistent provisions in legislation, subordinate legislation, etc. relating to particular authorities are overridden
- . to ensure, however, that nothing in the Bill is to affect the normal arbitral processes.

25. Formal: delegations

26. Formal: Repeal of part of Public Service Act and schedule amendments (see notes hereunder).

27. Formal: transitional.

28. This clause enables the Bill to be modified or adapted, by regulations, in its application to:

- . the Parliamentary Departments (this is consistent with section 9 of the Public Service Act, relating to such Departments)
- . particular authorities (it is envisaged, for example,

that for some larger independent authorities it would not be necessary to have a redeployment phase, involving the Public Service Board, in cases based directly on the capacity of individuals - eg invalidity).

29. Regulations may be made covering:

- . various aspects of the procedures of appeal tribunals
- . the possible application of the legislation to certain specific employment areas which are not, strictly speaking, 'authorities' so as to enable the normal regulation-making process to be used.

Schedule:

Most of the amendments of other Acts (namely the Long Service Leave (Commonwealth Employees) Act, the Public Service Act and the Superannuation Act) are provisions which are directly consequential on the scheme introduced in the substantive Bill. One change which should be mentioned is the proposed new sub-section 82(4) of the Public Service Act, which

will provide a sounder basis for temporary employment under the Public Service Act: it will be possible to specifically delimit that employment by reference to a particular period or the duration of particular work.