

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMONWEALTH TEACHING SERVICE AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Minister for
the Arts, Sport, the Environment, Tourism
and Territories, The Hon. John Joseph Brown MP)**

COMMONWEALTH TEACHING SERVICE AMENDMENT BILL 1987

GENERAL OUTLINE

The purpose of the Bill is to amend the **Commonwealth Teaching Service Act 1972**. The principal amendments bring the Act into line with the Public Service Act in the areas of promotions, transfers, appeals, forfeiture of office and attachment of salary. Provision is also made for the transfer of staff from the Service to certain Commonwealth authorities, should this prove necessary; and for the implementation of certain technical changes to remove inconsistencies from the Act.

2 Clause 5 alters the definition of "efficiency" used by selection panels in the initial selection of an officer and in appeals against selections to conform with the formula contained in the Public Service Act. At the same time seniority is abolished as a factor for consideration in promotions and transfers, leaving efficiency as the sole determinant. Clause 6 limits appeals to those persons who applied for an advertised position.

3 Under new Division 4 (inserted by clause 7) a relevant authority has the option of selecting officers on the advice of a Joint Selection Committee. The recommendation of a Committee, if accepted, is not subject to appeal.

4 New Division 5 (inserted by clause 7) allows a relevant authority to retire an officer who has been absent on unauthorised leave for an extended period. New Division 5A (also inserted by clause 7) makes provision for a proportion of an officer's salary to be paid to a creditor where judgment is given against the officer by a Court.

5 The Minister is given power to transfer staff to a Commonwealth authority when that authority takes over a function (new section 50A inserted by clause 11). This will allow the transfer of staff, currently employed in ACT TAFE colleges and in the Schools of Music and Arts, to the proposed ACT Institute of TAFE and the proposed Canberra Institute of the Arts respectively. Ordinances establishing the two Institutes are expected to commence in January 1988. Staff transferred under the section would retain conditions of service at a level broadly comparable to those they now enjoy. Accrued rights, such as recreation leave credits, would also be preserved under the section.

6. It is proposed to consult with employee representatives about applicable conditions before staff are transferred under new section 50A. Other substantive provisions in the Bill result from extensive consultation.

7. Existing Division 8, which applied special superannuation provisions to certain teachers transferred to the Commonwealth from the Teaching Services of New South Wales and South Australia, is repealed by clause 8. This follows a 1976 amendment to the Superannuation Act 1922 which in effect made the Division redundant.

FINANCIAL IMPACT STATEMENT

8. No additional costs are involved. Some minor savings are expected to flow from a reduction in the number of appeals required to be determined by Promotions Appeal Boards under section 29.

ABBREVIATIONS

9. The following abbreviations are used in this Explanatory Memorandum:

Bill	:	The Commonwealth Teaching Service Amendment Bill 1987.
The Service	:	The Commonwealth Teaching Service
The Minister	:	Minister for the Arts, Sport, the Environment, Tourism and Territories.
Public Service Act:		The Public Service Act 1922, as amended by the Public Service Legislation (Streamlining) Act 1986.
ACT Institute of TAFE :		The proposed Australian Capital Territory Institute of Technical and Further Education, to be established under the Ordinance of that name.

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short Title etc

Citation and reference to Principal Act.

Clause 2: Commencement

The provisions of the Bill are to come into operation on a day or days, to be fixed by Proclamation.

Clause 3: Interpretation

Amends section 4 as follows:

The words "of Education" are omitted from the definition of "Secretary" to obviate the need for a further amendment if responsibility for the Act passes to another portfolio under a future change in administrative arrangements.

"Commonwealth authority" is defined to mean either a body corporate incorporated for a public purpose under an enactment or an authority established under an enactment for a public purpose, where either body employs staff otherwise than under the Principal Act.

"relevant staff organisation" means an organisation registered under the **Conciliation and Arbitration Act 1904**, for membership of which a person holding a designated position would be eligible. This definition comes into play in section 31.

- . "Returned soldier" and "specified defence service" have the same meaning as in the **Public Service Act 1922**.

Clause 4: Establishment of Commonwealth Teaching Service

Subclause 4(1) amends section 19 by omitting paragraph 19 (3)(b), which establishes the Australian Capital Territory Technical and Further Education component, and paragraph 19(5)(b), which deals with the appointment of a person as the relevant authority of the component.

The Commonwealth Teaching Service is divided into three "components", one of which is the Technical and Further Education component. New section 50A, inserted by clause 11 of this Bill, enables employees to be transferred to two Commonwealth authorities, the ACT Technical and Further Education Institute and the Canberra Institute of the Arts, to be established under the Ordinances of those names in January 1988. If such a transfer occurs the need for the TAFE component will be obviated.

Once all the teachers in the component have been transferred, **subclause 4(1)** will be activated by Proclamation.

In each component of the Service there is a relevant authority. One of the functions of the relevant authority is to make teaching staff available to the educational and other institutions within the component

Subclause 4(2) amends paragraph 19(5)(a) to substitute a new description of the person holding the position of relevant authority in relation to the ACT Schools component.

Clause 5: Repeal of section 28 and substitution of new section 28

Subclause 5 (1) repeals section 28 and substitutes a new section based on section 50A of the Public Service Act, as amended by subsection 39(1) of the **Public Service Legislation (Streamlining) Act 1986** ("the Streamlining Act"). Under the new section seniority is removed as a factor to be considered in the selection of officers for promotion or transfer.

Subsection 28(1) requires a relevant authority to promote or transfer the most efficient of the officers who have applied to fill a vacant position. The factors to which a relevant authority should have regard in forming an opinion as to the most efficient of the applicants is outlined in subsection (2).

Under subsection (3) account is taken of the disadvantage suffered by certain past or present members of the Defence Force because of their involvement with the Force.

Subclause 5(2), a transitional provision, applies to vacant positions the interviewing for which began before the commencement of this Bill.

Clause 6: Appeals against promotion

Subclause 6(1) amends section 29 to provide a new procedure for appeals against promotions made under section 27.

Under new subsections (2) and (3), an officer is not entitled to appeal unless he or she applied for the position advertised. Where the position was not advertised, however, the **Commonwealth Teaching Service Regulations** allow the officer to appeal.

Subsection (3A) provides that an officer may only appeal on the grounds of greater efficiency.

Subsection (3B) requires a Promotions Appeal Board specified by the relevant authority to make only such enquiries as it considers necessary to enable it to form an opinion as to the most efficient of the officers involved in the appeal.

Subsection (3C) requires the Promotions Appeal Board to have regard to the matters outlined in paragraph (3C)(a) to the extent that it considers them relevant, with the proviso that the officers' potential for career development and ability to perform duties of similar positions should also be considered if the relevant authority had regard to either or both of them in the initial selection.

Subsection (3D) makes allowances for the disadvantage suffered by certain past or present members of the Defence Force because of their involvement with the Force.

Subsection (3E) allows the Board not only to allow or disallow an appeal so as to give effect to its opinion but also to cancel a promotion altogether if it considers that none of the officers involved in the appeal were suitable.

Under subsection (3F) the Board may refuse to consider an appeal if each member of the Board is satisfied that the appeal was not made in good faith. In such a case, the appeal is deemed by subsection (3G) to have been withdrawn.

This section follows the form of sections 50B and 50D of the Public Service Act, as amended by the Streamlining Act.

Clause 6(2) is a transitional provision which preserves the position of officers who were provisionally promoted prior to the commencement of the Act.

CLAUSE 7: Insertion of new Divisions 4, 5 and 5A

DIVISION 4 - JOINT SELECTION COMMITTEES

Section 31 provides for a procedure whereby a relevant authority may transfer or promote an officer on the advice of a Joint Selection Committee ("JSC") constituted under section 32 instead of transferring or promoting the officer under section 27.

Subsections (3) and (4) require the relevant authority to inform the staff organisation to which the majority of officers occupying positions of the class of the vacant position belong, in writing, that it proposes to fill the vacant position under this section.

Provided that the staff organisation consents to the proposal, the relevant authority must then (a) put a notice of the proposal in the Gazette and (b) arrange for the establishment of the JSC: subsection (5).

Section 32 : Joint Selection Committee

Subsection (1) provides that a JSC is to be constituted by (a) a chairperson appointed by the Minister and (b) either two or three members appointed by the relevant authority.

Under subsection (2), members may not be appointed to the JSC under paragraph (1)(b) without the consent of the relevant staff organisation.

Subsection (3) provides a mechanism for the reconstitution of the JSC where a member of the Committee ceases to take part in its deliberations.

Subsection (4) outlines the procedure to be followed where members of a JSC disagree on the question of which applicant to appoint to the vacant position.

Section 33 : Procedure of Joint Selection Committee

Section 33 describes the procedure to be followed in assessing applicants. The aim is to make the proceedings as informal and as fast as possible.

Sections 31 to 33 are based on sections 50DA, 50DB and 50DC of the Public Service Act, as amended by the Streamlining Act

Section 34 : Arrangements where no Joint Selection Committee or where advice of Committee not accepted

Section 34 provides that if a relevant authority is either (a) unable to arrange for the establishment of a JSC or (b) is unwilling to act on the advice of such a Committee, he or she may transfer or promote an officer under section 27. Officers transferred or promoted under that section then have access to limited appeal rights under section 29.

Section 34A : Promotion and transfer on advice of Joint Selection Committee not subject to appeal

Under subsection (1) a promotion made in accordance with the advice of a JSC (a) should be notified in the Gazette as such and (b) is not subject to appeal. Subsection (2) requires an officer transferred under this Division to be given notice in writing of the transfer.

DIVISION 5 - FORFEITURE OF OFFICE

This Division is based on Division 6A of Part III of the Public Service Act as amended by sections 61 and 62 of the Streamlining Act. Division 5 applies to both officers and temporary employees.

Section 34B : Forfeiture of Office

Subsection (1) provides that where an officer has been absent from work without permission for not less than four weeks the relevant authority may write to the officer, requiring him or her, within two weeks (a) to return to work or (b) to explain his or her absence. If the officer does not comply with subsection (1) he or she is deemed by subsection (2) to have retired at the end of the two week period.

Subsection (3) provides a mechanism for a review of this decision where an officer contacts the relevant authority within the two week period and requests permission for a further period of absence. The relevant authority shall then notify the officer that further leave of absence is granted or require the officer to return to duty.

Where an officer does not comply with a notice sent under subsection (3), he or she may be deemed to have retired under subsection (4).

Subsection (5) provides that the relevant authority may revoke a notice previously sent under the section.

Section 34C : Re-appointment of officers and temporary employees deemed to have retired under section 34B

This section provides a two-tier review process to allow the re-appointment of officers deemed to have retired under section 34B. The first tier involves review by the relevant authority; the second tier allows for review "as prescribed". In practice this will mean review by the Merit Protection and Review Agency.

Paragraph (4)(a) deems a person re-appointed to have been on leave of absence without pay during his or her absence. It is for the relevant authority, under paragraph (4)(b), to determine whether the officer continued to accrue rights under this or any other Act (other than the **Superannuation Act 1976**) during the officer's period of absence.

DIVISION 5A - ATTACHMENT OF SALARIES

Section 34D - Attachment of salaries of officers

This section outlines machinery for deducting a proportion of an officer's fortnightly salary to satisfy debts incurred by the officer, where judgment was given against the officer by a Court.

It is based closely on section 64 of the Public Service Act, with the following differences:

- (a) the penalty for a failure by the judgment creditor to inform the relevant paying officer immediately the debt has been satisfied has been increased to \$1,000 or imprisonment for 6 months, or both (subsection (10)).
- (b) the section does not apply to persons affected by the **Bankruptcy Act 1966** (subsection (16)); and
- (c) judgements made under the **Family Law Act 1975** are to be enforced under the garnishment procedure provided in the **Family Law Regulations** (subsection (17)).

Under subsection (1) a creditor may serve on the paying officer of a component a copy of the judgment and a statutory declaration setting out the amount payable under the judgment by an officer employed within the component.

Subsections (2), (3) and (4) require the paying officer to ascertain whether the officer has satisfied the debt and if not, to deduct a proportion of the officer's salary and to pay it to the creditor each pay period until the amount owing has been repaid.

Subsection (5) enables the Commonwealth to recover its administration costs by charging the creditor a fee calculated at

a rate prescribed under the **Commonwealth Teaching Service Regulations**.

Where the amount paid by the officer to the creditor exceeds the amount due under the judgment the creditor must repay the officer the excess: subsection (9).

Subsections (11) to (14) provide for situations where (a) a paying officer is served with two or more judgments against an officer, and (b) the officer transfers to another component of the Service.

Provision is also made under subsection (15) to deduct a smaller proportion of an officer's salary where to deduct more would cause hardship.

Clause 8: Repeal of Division 8 of Part III

Repeals Division 8 of Part III of the Principal Act. This Division formerly applied special conditions of superannuation to certain teachers who transferred to the Commonwealth Teaching Service from the State teaching services of New South Wales and South Australia. The Division was, in effect, made redundant by subsection 89(3) of the **Superannuation Amendment Act 1976**

Clause 9: Right to re-enter Commonwealth Teaching Service by way of transfer or promotion

Clause 10: Rights of officers upon re-appointment

Clauses 9 and 10 omit references to seniority in sections 43U and 43X of the Principal Act, which deal with the re-entry of officers to the Service from the Teaching Service of the Northern Territory by transfer or promotion, and the rights of those officers upon re-appointment, respectively.

Clause 11: Insertion of new section 50A

Inserts a new section 50A, based on section 81C of the Public Service Act, allowing Commonwealth Teaching Service members to be transferred to Commonwealth authorities on a date specified, by notice in the Gazette.

This section would enable the transfer of officers, currently employed in the Service as staff members in Canberra TAFE colleges and in the Schools of Art and Music, to the proposed ACT Institute of TAFE and the proposed Canberra Institute of the Arts respectively, once those Institutes have been established under their enabling Ordinances. The use of the expression "Commonwealth authority" means that the section may also be used to transfer officers to other statutory bodies coming within the definition in section 4; should this become necessary in the future.

