

1988

**THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA**

HOUSE OF REPRESENTATIVES

**GOVERNMENT BUSINESS ENTERPRISES
(MISCELLANEOUS REFORMS) BILL 1988**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the Minister for
Industrial Relations, the Hon Ralph Willis MP)**

**GOVERNMENT BUSINESS ENTERPRISES (MISCELLANEOUS REFORMS)
BILL 1988**

OUTLINE

The Bill represents an early legislative plank in implementing the far reaching reform of government business enterprises announced by the Government as part of the May 1988 Economic Statement and its supporting documents.

Specifically, by amendments to the Remuneration Tribunals Act 1973, the Bill provides for statutory office holders and chief executives employed by certain government business enterprises and other employers, as appropriate, to be removed from the formal determination-making jurisdiction of the Remuneration Tribunal.

The offices involved will be identified individually and removed by regulation when the office becomes vacant through retirement or the decision of the incumbent to vacate the office and compete for appointment under the new arrangements.

In respect of these offices, the Bill provides the Remuneration Tribunal with a new advisory jurisdiction on the terms and conditions of employment under which the executives are to be appointed.

The Bill also provides for annual reporting to Parliament by the Remuneration Tribunal on the general operation of the new advisory jurisdiction. Employers covered by the new arrangements will be required to include details in their financial statements on the remuneration of the relevant executives, consistent with the standards applying to listed companies.

Related amendments to the enabling Acts of the Commonwealth Bank, the Australian Shipping Commission, and the Snowy Mountains Engineering Corporation are also proposed in the Bill. They provide that the relevant portfolio Minister will appoint the chief executive of the enterprise after receiving a recommendation from the enterprise board and that the board will be able to dismiss the chief executive. The amendments also give effect to the new remuneration arrangements in empowering boards to determine the remuneration of the chief executives. The new remuneration arrangements will also apply to chief executives of the Reserve Bank.

Finally, the Bill makes complementary amendments to the Long Service Leave (Commonwealth Employees) Act 1976. These amendments are to ensure that affected office holders covered by the new arrangements do not have their service in a relevant office count as service for long service leave purposes.

Financial Impact Statement

There are no considerations for the Budget arising from these proposals.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 : Short Title

This clause gives the short title of the Bill.

Clause 2 : Commencement

Amendments to the Australian Shipping Commission Act 1956 (Part II of the Bill) are to come into operation on 26 January 1989 as the term of the current Managing Director expires on 25 January 1989.

Amendments to the Reserve Bank Act 1959 (Part VI of the Bill) are to come into operation on a day to be proclaimed.

Amendments to the Snowy Mountains Engineering Corporation Act 1970 (Part VII of the Bill) are to come into operation on 14 November 1988, as the term of the current Managing Director expires on 13 November 1988.

The remainder of the Bill is to come into operation on the day on which the Bill receives the Royal Assent.

PART II - AMENDMENTS OF THE AUSTRALIAN SHIPPING COMMISSION ACT 1956

Clause 3 : Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Australian Shipping Commission Act 1956.

Clauses 4 and 5:

Clauses 4 and 5 amend section 8 and section 8A of the Principal Act by deleting the provisions currently providing for the tenure of the Managing Director.

Clause 6 : Leave of non-executive Commissioner

This clause amends section 10 of the Principal Act to remove the current power of the Minister to grant leave of absence to the Managing Director on any remuneration determined by the Minister.

Clause 7 : Remuneration and allowances of non-executive Commissioners

Clause 7 amends section 11 of the Principal Act to remove the Managing Director from the formal determination-making jurisdiction of the Remuneration Tribunal.

Clause 8 : Termination of appointment of non-executive Commissioners

Clause 8 amends section 12 of the Principal Act to remove the Managing Director from the termination of appointment provisions. Currently the Governor-General may terminate the Managing Director for misbehaviour or physical or mental incapacity, bankruptcy, for failing to comply with certain obligations under section 13, or absence from duty.

Clause 9 : Resignation of non-executive Commissioners

This clause amends section 13A of the Principal Act to remove the Managing Director from the resignation provision applicable to other Commissioners.

Clause 10

This clause inserts a proposed new Division 2A - Managing Director into Part II of the Principal Act.

The proposed sections 20A and 20B provide for a Managing Director of the Commission as its chief executive officer.

The proposed section 20C provides for the appointment of the Managing Director by the Minister. Normally, it would be expected that the Minister and the Commission would agree on the person to be appointed. Where agreement is not reached, however, the Minister will be free to select the person to be appointed. The Governor-General appoints the Managing Director on a full-time basis under the legislation currently in force.

The effect of the proposed section 20D is to identify the commencement of the appointment of the Managing Director and to provide that his or her appointment may be terminated at any time by the Commission.

The proposed sections 20E and 20F specify the Managing Director as a full-time position subject to terms and conditions of employment determined by the Commission. Currently terms and conditions are determined by the Remuneration Tribunal.

The new section 20G requires the Managing Director to advise the Chairman in writing of all direct and indirect pecuniary interests that he or she has or acquires in any business or any body corporate carrying on as a business.

Under the proposed section 20H the Commission will be able to appoint a person to act as Managing Director as described in the section.

The proposed section 20J concerns the exclusion of the Managing Director from participating in deliberations concerning permanent appointments to the Managing Director position. A person acting as Managing Director is also excluded from deliberations concerning the appointment of a Managing Director or an acting Managing Director.

Clause 11 : Repeal of section 23

This clause repeals section 23 of the Principal Act which is the provision currently identifying the Managing Director as the chief executive officer of the Commission. This provision becomes redundant with the inclusion of the proposed section 20B.

Clause 12 : Information relating to remuneration of Managing Director

This clause inserts a new section 35A into the Principal Act to provide for the annual reporting on executives' remuneration required of listed corporations under the Companies Act 1981.

PART III - AMENDMENTS OF THE COMMONWEALTH BANKS ACT 1959

Clause 13 : Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Commonwealth Banks Act 1959.

Clause 14 : Membership of the Board

The Act currently provides that the Board shall consist of the Managing Director, Deputy Managing Director, Secretary of the Department of the Treasury and eight other members appointed by the Governor-General. Board members receive remuneration and allowances as determined by the Remuneration

Tribunal. The effect of clause 14 is to make it clear that the remuneration and allowances determined by the Remuneration Tribunal will only apply to those members of the Board appointed by the Governor-General.

Clause 15

Clause 15 replaces sections 25 and 26 of the Act with new sections 25, 26, 26A, 26B, 26C and 26D.

The existing sections 25 and 26 provide for the Managing Director and Deputy Managing Director to be appointed by the Governor-General; to hold office, subject to good behaviour, on terms and conditions determined by the Governor-General; to receive remuneration and allowances as determined by the Remuneration Tribunal; and to be subject to dismissal by the Governor-General under specified conditions.

The new sections make provisions as follows:

Appointment of Managing Director and Deputy Managing Director

Sub-sections 25(1) and (2) give the Treasurer power to appoint the Managing Director and Deputy Managing Director. Normally it would be expected that the Treasurer and the Board would agree on the people to be appointed to these positions. Where agreement is not reached, however, the Treasurer will be free to select the person or persons to be appointed.

Sub-section 25(3) provides that an existing Board member (other than the Managing Director or Deputy Managing Director) must resign from the Board before he or she can be appointed as Managing Director or Deputy Managing Director.

Sub-section 25(4) is designed to prevent the authority of the Managing Director or Deputy Managing Director, or the legal obligations they have entered into in the course of their duties, being challenged on the basis of any legal technicality relating to their appointment.

Holding of Office at Board's Pleasure, etc

The new section 26 specifies that the commencement of the term of office for the Managing Director and Deputy Managing Director will be in accordance with their instruments of appointment, but denies security of tenure to the Managing Director and Deputy Managing Director by subjecting them to dismissal by the Board.

Managing Director and Deputy Managing Director hold Office on a full-time basis

This is provided by the insertion of a new section - section 26A.

Terms and Conditions of Appointment not provided for by Act

The new section, section 26B, specifies that the terms and conditions (including all remuneration and allowances) under which the Managing Director and Deputy Managing Director hold office are to be determined by the Board, consistent with the other provisions of the Act.

Disclosure of Interests

The new section, section 26C, requires the Managing Director or Deputy Managing Director to advise the Chairman of the Board in writing of all their direct and indirect business and pecuniary interests.

Exclusion of Managing Director and Deputy Managing Director from certain deliberations

The new section, section 26D, provides that the Managing Director and Deputy Managing Director shall not be present during any deliberations of the Board, or take part in any decision of the Board, relating to the appointment, determination or application of terms and conditions, or the termination of the appointment of themselves or each other.

Clause 16 : Repeal of section 112

Clause 16 repeals section 112 of the Principal Act, which specifies the superannuation and other benefits payable to a Managing Director or Deputy Managing Director upon death, retirement or termination of his/her period of office. Such payments are to be subsumed under the new section, section 26B (see above).

Clause 17 : Information relating to Remuneration of Managing Director and Deputy Managing Director

Clause 17 inserts a new section, section 121A, to ensure that the Corporation complies with the reporting requirements prescribed in the Companies Act 1981 for listed companies, so far as the income of executive officers (including the Managing Director and Deputy Managing Director) is concerned.

Clauses 18 and 19 : Transitional Provisions for existing Managing Director and Deputy Managing Director

Clauses 18 and 19 provide for the existing provisions of the Act relating to the appointment, terms and conditions and remuneration and allowances for the Managing Director and Deputy Managing Director to continue to apply to the existing office holders. These saving provisions for the present incumbents are to cease to apply when their respective offices next become vacant.

**PART IV - AMENDMENT OF THE LONG SERVICE LEAVE
(COMMONWEALTH EMPLOYEES) ACT 1976**

Clause 20 : Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Long Service Leave (Commonwealth Employees) Act 1976.

Clause 21 : Meaning of Employment in Government Service

Clause 21 amends section 10 of the Principal Act and has the effect of excluding the holders of principal executive offices within the meaning of the Remuneration Tribunals Act 1973 from accruing entitlements to long service leave benefits.

PART V - AMENDMENTS OF THE REMUNERATION TRIBUNALS ACT 1973

Clause 22 : Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Remuneration Tribunals Act 1973.

Clause 23 : Interpretation

Paragraph 23(a) contains new definition provisions. Significant terms are described below:

"Employing Body" means any employer declared in the regulations who employs a holder of a "principal executive office".

"Principal Executive Office" means a statutory office or other executive office declared in regulations.

Paragraph 23(b) inserts a new paragraph 4 (ra) into the Principal Act and provides for "principal executive offices" to be removed from the determination-making jurisdiction of the Tribunal by the making of regulations.

Clause 24 : Functions of the Tribunal

Clause 24 amends section 5 of the Principal Act to provide the Tribunal with a new advisory jurisdiction to employers of the holders of "principal executive offices" in relation to the terms and conditions of employment.

Clause 25 : Annual Report

Clause 25 amends section 12AA of the Principal Act to provide for annual reporting by the Tribunal on the general operation of its new advisory jurisdiction in relation to "principal executive offices".

PART VI - AMENDMENTS OF THE RESERVE BANK ACT 1959

Clause 26 : Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Reserve Bank Act 1959.

Clause 27 : Meetings of the Board

Clause 27 amends sub-section 21(2) of the Principal Act. The effect of the amendment is for the present requirement of the Act for the Governor or Deputy Governor to preside at meetings of the Board to be waived whenever the Board deals with their remuneration or terms or conditions of employment. It also removes from sub-section 21(3) the requirement that the Governor or Deputy Governor must be included in any quorum. This requirement as currently specified in sub-section 21(3) is redundant [being also implied by sub-sections 20(1) and 21(2)] and its removal enables meetings dealing with the remuneration or terms or conditions of employment of the Governor or Deputy Governor to proceed while retaining the requirement by implication in relation to other meetings of the Board.

Clause 28 : Exclusion of Governor and Deputy Governor from certain deliberations

Clause 28 inserts a new section, section 21A, which excludes the Governor and Deputy Governor from deliberations and decisions of the Board on the terms and conditions under which either of them holds office, and provides for the Board to elect one of the members present to preside on these occasions.

Clause 29 : Terms and Conditions of Appointment not provided for by Act

Clause 29 repeals the existing section 24A, which provides for the remuneration and allowances of the Governor and Deputy Governor to be determined by the Remuneration Tribunal, and substitutes a new section 24A, which makes such remuneration and allowances and other terms and conditions of employment subject to determination by the Board.

Clause 30 . Repeal of section 72

Clause 30 repeals section 72, which provides for the appointment or re-appointment under certain circumstances of the Governor and Deputy Governor to the Reserve Bank Service where these office holders were employed by the Reserve Bank Service or the Commonwealth Bank Service prior to their appointment as Governor or Deputy Governor. The repeal of this section does not prevent the re-appointment of a former Governor or Deputy Governor to the Reserve Bank Service but it removes any obligations on the Bank in this regard.

Clause 31 : Information relating to Remuneration of Governor and Deputy Governor

Clause 31 inserts a new section, section 81A, which provides that the financial statements of the Bank shall comply with the reporting requirements prescribed in the Companies Act 1981 for listed companies, so far as the remuneration of executive officers of the Bank, including the Governor and Deputy Governor, is concerned.

**PART VII - AMENDMENTS OF THE SNOWY MOUNTAINS ENGINEERING
CORPORATION ACT 1970**

Clause 32 : Principal Act

This clause provides for the definition of "Principal Act" in this Part of the Bill to mean the Snowy Mountains Engineering Corporation Act 1970.

Clause 33 : Appointment and Holding of Office , etc, of Managing Director

This clause repeals the existing section 32 of the Principal Act which deals with the appointment of the Managing Director by the Governor-General and the conditions pertaining to that appointment, and substitutes new sections 32 and 32A. New section 32 provides for the Managing Director to be appointed by the Minister. Normally it would be expected that the Minister and the Board would agree on the person to be appointed. Where agreement is not reached, however, the Minister will be free to select the person to be appointed. New section 32A provides for dismissal of the Managing Director by the Board.

Clause 34 : Managing Director not to engage in other work

Clause 34 amends section 33 of the Principal Act to prohibit the Managing Director from engaging in outside paid

employment except with the approval of the Board, rather than the present requirement for the Minister to approve such outside employment.

Clause 35 : Terms and conditions of employment and disclosure of interests of Managing Director

This clause repeals sections 34, 35, 36 and 37 of the Principal Act and substitutes new sections 34 and 35. Currently the remuneration and allowances of the Managing Director are determined by the Remuneration Tribunal and his or her allowances are prescribed. The new section 34 allows for the Board to determine the terms and conditions of appointment, including remuneration and allowances of the Managing Director. New section 35 requires the Managing Director to disclose all existing direct or indirect pecuniary interests or any acquired in any business. Section 35 deals with leave of absence of the Managing Director, section 36 deals with resignation and section 37 deals with termination of appointment. These provisions are not appropriate under the new employment arrangements proposed for the Managing Director.

Clause 36 : Exclusion of Managing Director etc from certain deliberations

This clause inserts a new section 38A into the Principal Act which deals with the exclusion of the Managing Director from participating in deliberations concerning permanent appointments to the Managing Director position and the exclusion of a person acting as the Managing Director from participating in deliberations concerning appointments to the position of Acting Managing Director.

Clause 37 : Information relating to remuneration of Managing Director

This clause inserts a new section 52A into the Principal Act to provide for the annual reporting on executives' remuneration required of listed corporations under the Companies Act 1981.

