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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MEMBERS OF PARLIAMENT (STAFF) BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister representing the
Minister Assisting the Prime Minister for Public Service Matters)

OUTLINE

1. The purpose of this Bill is to create a legislative scheme for the engagement of consultants to provide services for Ministers of State, and for the employment of staff by Ministers, office-holders in the Government and Opposition, and by Senators and Members.

2. It is divided into the following Parts -

- Part I - Preliminary
- Part II - Ministerial consultants
- Part III - Staff of office-holders
- Part IV - Staff of Senators and Members
- Part V - Re-integration Assessment Committees

3. Under Part II of this Bill, Ministerial consultants (either persons or companies) will be engaged by Ministers after approval by the Prime Minister of written agreements specifying the duties to be performed (clause 4). The terms and conditions of the engagement will be determined by the Public Service Board (clause 5) except for superannuation (clause 8). Engagements will be for periods of up to three years, with special provisions for the termination of the consultancy (clause 9). Special provisions will define the rights of officers and employees of the Australian Public Service (APS) who are engaged as consultants.

4. Part III provides that the staff of office-holders (being the holders of the offices defined in clause 3) will be employed upon the approval of the Prime Minister (clause 12) by written agreements (clause 13). The terms and conditions of employment are to be the same as the terms and conditions applying to an officer in the APS having an equivalent classification to that specified in the employment agreement (clause 14) except for superannuation (clause 15) and the termination of the employment (clause 16) or as otherwise varied by the Prime Minister.

5. Under Part IV, staff employed by Senators or Members will be subject to the same requirements as specified in Part III.

6. The Re-integration Assessment Committee in Part V will assess applications made by officers of the Australian Public Service who are engaged or employed under this Bill and who subsequently seek to return to the Service.

7. Provision is made for the application of the Public Service Arbitration Act 1920 to staff employed by Ministers, office-holders and Members of Parliament (Clause 32).

NOTES ON CLAUSES

PART I - PRELIMINARYClause 1 - Short title

Specifies the short title of the Act.

Clause 2 - Commencement

Provides that the substantive provisions of the Act shall come into operation on a day or days to be fixed by proclamation.

Clause 3 - Interpretation

Defines various expressions used in the Bill.

PART II - MINISTERIAL CONSULTANTSClause 4 - Minister may engage consultants

A Minister may, with the approval of the Prime Minister, in writing, engage a person, company or firm as a consultant. However, this power may be exercised only in accordance with arrangements approved, and conditions determined, by the Prime Minister. A written agreement for the engagement of a consultant shall include provisions specifying the tasks that the consultant is engaged to perform under the supervision of the Minister or the Secretary of the Minister's Department.

It has been a longstanding practice for consultants to be engaged by Ministers or Departments on their behalf. The provision removes any doubt about the legal basis of such engagements.

Clause 5 - Terms and conditions of engagement

The terms and conditions (not specifically dealt with by the Act) applying to a person engaged as a consultant are to be determined by the

Public Service Board. Similarly, terms and conditions applying to a company or firm are determined by the Board. Such terms and conditions are to be specified in the written agreement of engagement, and such an agreement may be varied in such manner as provided in the agreement.

Clause 6 - Natural persons may be engaged under contracts of employment or contracts for services

The clause permits a consultant to be engaged under a contract of employment or under a contract for the provision of services.

Clause 7 - Engagement of natural persons under contracts of employment

A consultant who is engaged under a contract of employment may be full-time or part-time. A term or condition of engagement of such a person may be specified by reference to the entitlement the person would have if a specified Act (with or without modifications) applied.

Clause 8 - Superannuation

A Minister may determine that the written agreement applying to an individual engaged under a contract of employment will contain provisions determined by the Minister in accordance with arrangements approved by the Minister for Finance, providing superannuation benefits, or benefits in the nature of superannuation benefits, to the individual. (Such arrangements cannot apply to a person who is a pensioner under the Superannuation Act 1976 or who, immediately before being engaged as a ministerial consultant, was an employee within the meaning of that Act.) The superannuation benefits provided to such a consultant may be those available under the Superannuation Act (with or without modifications) or may be other superannuation benefits. The Superannuation Act shall not apply unless it is expressly provided for in the written agreement.

Clause 9 - Termination of engagement as consultant

The engagement of a consultant automatically terminates if the Minister by whom the consultant was engaged ceases to hold ministerial office or changes portfolios, unless the Prime Minister directs in writing that the

engagement shall be deemed not to have terminated, or to continue until a specified date. If a consultancy does not terminate as provided above, it will terminate at the end of the period (not exceeding 3 years) specified in the agreement under which the consultant was engaged.

Clause 10 - Rights of officers engaged as consultants

An officer of the APS who is engaged as a consultant under a contract of employment will be covered by Part IV of the Public Service Act 1922 (i.e. will have certain rights of return to the APS, and will have various APS entitlements preserved).

Clause 11 - Rights of temporary employees engaged as consultants

A temporary employee in the APS who is engaged as a consultant will be deemed to be on leave without pay from the APS during the engagement. The period will count as service for the purpose of determining entitlements in the event of return to the APS. However, if the APS employment was for a fixed term or for the duration of a particular project, the employee shall be deemed to have ceased to be an APS employee at the expiration of the period or the completion of the project.

PART III - STAFF OF OFFICE-HOLDERS

Clause 12 - Determinations by Prime Minister

This clause enables the Prime Minister to determine that Members or Senators, in the light of the nature of their parliamentary duties ought to be empowered to employ staff under the Part.

Clause 13 - Office-holders may employ staff

This clause provides a head of power for an office-holder, on behalf of the Commonwealth, to employ persons under agreements in writing, in accordance with arrangements approved by the Prime Minister, and subject to such conditions as are determined by the Prime Minister. Under clause 3 office-holders are defined as Ministers, the Leader and the

Deputy Leader of the Opposition in each House, the leader and deputy leader in each House of a recognised political party and persons in respect of whom the Prime Minister has made a determination under clause 12.

Clause 14 - Terms and conditions of employment

Sub-clause (1) provides that, subject to certain exceptions the terms and conditions of employment of a person employed by an office-holder are to be the same as the terms and conditions applying to an office in the APS having an equivalent classification to that specified in the employment agreement.

Sub-clause (2) provides that the provisions of the Commonwealth Employees (Redeployment and Retirement) Act 1979 do not apply to the staff of office-holders. Sub-clauses (3) and (4) enable the Prime Minister to vary by determination the terms and conditions applying by virtue of sub-clause (1).

Clause 15 - Superannuation

The clause provides that an employment agreement may include provisions relating to superannuation, including, where appropriate, arrangements under the Superannuation Act 1976 in the same manner as provided by clause 8.

Clause 16 - Termination of employment

This clause provides for termination of employment of a staff member where an office-holder dies, ceases to hold the relevant office or the relevant determination by the Prime Minister is revoked. The clause also provides for termination by written notice by the office-holder to the person employed. However, sub-clause (5) enables the Prime Minister to direct that the employment continue for a period, eg, to permit a winding-down period or to allow for other special circumstances.

Clause 17 - Rights of officers employed by office-holders

This clause provides that an officer of the APS who is employed under the Part is to be deemed to be employed as the holder of a Commonwealth office for the purpose of Part IV of the Public Service Act, which provides rights in relation to promotion and transfer for former APS officers employed by public authorities.

It also provides for assessment of the appropriate levels for re-integration into the APS. Upon termination of employment an officer may apply to the Public Service Board for a determination of the classification at which he should be reintegrated into the Service. (With the establishment of the Merit Protection and Review Agency references to the Board will be replaced by a reference to the Agency.) A Re-integration Assessment Committee is to determine the appropriate level having regard to the matters set out in paragraphs 4(a) to (d).

Clause 18 - Rights of employees employed by office-holders

This clause provides that where an employee under the Public Service Act is employed by an office-holder under this legislation, that employee is deemed to be on leave without pay for the duration of the employment on the same basis as set out in clause 11.

Clause 19 - Power to employ electorate staff not affected

This clause provides that the power to employ staff exercised by office-holders under the Part is not to affect the power of an office-holder who is a Senator or Member to employ electorate staff.

PART IV - STAFF OF SENATORS AND MEMBERSClause 20 - Senators and Members may employ staff

This clause provides that a Senator or Member may, on behalf of the Commonwealth, employ persons under agreements in writing. This power must be exercised in accordance with arrangements approved by the Prime Minister and is subject to such conditions as are determined by the Prime Minister.

Clause 21 - Terms and conditions of employmentClause 22 - SuperannuationClause 23 - Termination of employmentClause 24 - Rights of officers employed by Senators and MembersClause 25 - Rights of employees employed by Senators and Members

These clauses make similar provision to that made by clauses 14 to 18 in respect of persons employed by office-holders under Part III.

PART V - RE-INTEGRATION ASSESSMENT COMMITTEES

This part makes interim provision for the constitution of Re-integration Assessment Committees pending the establishment of the Merit Protection and Review Agency.

Clause 26 - Re-integration Assessment Committees

This clause provides for the Public Service Board to arrange for the establishment of Re-integration Assessment Committees

Clause 27 - Constitution of Committees

This clause provides for a Committee to consist of a Chairman, being a person appointed by the Board (it is intended that a Promotions Appeal Committee Chairman will be appointed), a nominee of the Public Service Board and a person nominated by an appropriate staff organisation. Provision is made for the Chairman not to be subject to directions.

Clause 28 - Conduct of hearing

This clause provides that the proceedings of a Committee are to be conducted as informally as possible and in private.

Clause 29 - Member ceasing to act

The provision permits the reconstitution of a Committee where a member ceases to act.

Clause 30 - Split decisions

This clause provides for majority and split decisions.

Clause 31 - Annual Report

This clause requires the Prime Minister to prepare an Annual Report listing consultants engaged under section 4, the period of their engagement and the nature of their duties.

Clause 32 - Operations of Public Service Arbitration Act

This clause makes provision for the application of the Public Service Arbitration Act 1920 to staff employed by Ministers, office-holders and Members of Parliament by permitting the making of regulation to define the respondent for the purposes of the Public Service Arbitration Act.

These provisions will be repealed after the commencement of the Conciliation and Arbitration Act amendments which repeals the Public Service Arbitration Act. Staff then will be covered within the direct jurisdiction of the Conciliation and Arbitration Commission.

Clause 33 - Regulations

This clause provides that the Governor-General may make necessary regulations for the purposes of the Act.

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