

1983 - 1984
THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES
MERIT PROTECTION (AUSTRALIAN GOVERNMENT EMPLOYEES) BILL 1984
EXPLANATORY MEMORANDUM

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

OUTLINE

1. The purpose of the Merit Protection (Australian Government Employees) Bill 1984 is to provide for the setting up of an independent grievance authority to be known as the Merit Protection and Review Agency.

2. At present the Public Service Board makes a wide range of personnel management rules for the Australian Public Service (APS) and at the same time adjudicates on grievances arising from their administration, sometimes when it or its delegates are the initial decision-makers. These two functions do not fit comfortably together. It is proposed, therefore, to establish a new, independent statutory authority to be responsible for handling the grievances of public servants which are now dealt with under the aegis of the Board. It is also proposed that the various statutory appeal and review committees which deal with, for example, APS promotion appeals and discipline appeals be established under the auspices of the Agency.

3. Under the proposed legislation the Agency will comprise a full-time Director and up to four other members, two of whom may also be full-time. The Agency will be responsible for:

- (a) the oversight and administration of various statutory appeal and review committees;
- (b) reviewing particular decisions where a right of review of those decisions is provided in the terms and conditions of employment of staff;
- (c) the investigation of staff grievances;
- (d) conducting investigations at the request of the Minister responsible for the Agency, or of the Board; and
- (e) providing advice to staff in relation to their grievance and appeal rights.

4. An important element of the proposed legislation is that it includes provisions to enable the various appeal, review and grievance avenues to be extended to areas of Commonwealth employment outside the APS. In particular, it will be possible for Promotion Appeal Committees and Disciplinary Appeal Committees constituted under the proposed legislation to be made available for appeals from the staff of statutory authorities. Additionally, the terms and conditions of staff in statutory authorities will be able to provide access to the Merit Protection and Review Agency to enable the Agency to hear appeals on the merits of particular employment decisions and also to investigate actions complained of by staff.

5. Initially the jurisdiction of the Agency will be limited to the Public Service but over time, and with full consultation with the various statutory authorities and relevant staff organisations, it is expected that the Agency's services will be available for the resolution of grievances throughout a wider area of Commonwealth employment.

NOTES ON CLAUSES

Clauses 1 and 2 - Short Title and commencement

The first two clauses of the Bill provide for the short title and commencement of the legislation. The substantive provisions of the Bill will come into operation on days to be fixed by proclamation. Commencement on proclamation will enable the necessary preparatory work to be undertaken, for example, in relation to the appointment of members of the Agency and in relation to the making of necessary regulations under the proposed legislation, before the legislation comes into effect.

Clause 3 - Interpretation

This clause provides for various definitions that are used throughout the Bill. In many cases expressions are given the same meaning as they have in the Public Service Act 1922.

Clause 4 - Object

This clause outlines the object for which the Agency is established, that is, to ensure that actions taken and decisions made in relation to a Commonwealth employee, in relation to his or her employment as an employee, are in accordance with sound personnel management practices, having regard to the efficiency of the employing authority and the need to ensure good relations between employing authorities and their employees.

PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AGENCY

Division 1 of Part II relates to the establishment and functions of the Agency.

Clause 5 - Merit Protection and Review Agency

This clause provides for the establishment of the Agency.

Clause 6 - Functions of Agency

Clause 6 outlines the functions of the Agency, specifying that they are -

- (a) to arrange for the establishment of, and to ensure the proper and efficient operation of -
 - (i) Promotion Appeal Committees;
 - (ii) Disciplinary Appeal Committees;
 - (iii) Redeployment and Retirement Appeal Committees;
 - (iv) Re-appointment Review Committees; and
 - (v) Re-integration Assessment Committees;
- (b) to review certain employment decisions;
- (c) to investigate actions complained of relating to employment;
- (d) to conduct inquiries as requested by the Minister or the Board; and
- (e) to advise staff about their grievance and appeal rights.

Clause 7 - Interpretation

This clause defines the term 'Review Committee'.

Clause 8 - Agency to ensure efficiency of Review Committees

This clause imposes an obligation on the Agency to take reasonable steps to ensure that Review Committees carry out their functions properly and efficiently. The Agency will be responsible for constituting such Review Committees as are required and for providing administrative support for the operations of those Committees. The Agency will be able to issue guidelines of a procedural nature for the guidance of the Review Committees.

Subdivision B - Promotion Appeal Committees

Clause 9 - Promotion Appeal Committees

This clause will enable the Agency to arrange for the establishment of Promotion Appeal Committees for the purpose of appeals against promotions under the Public Service Act 1922 and for appeals provided under regulations against the temporary performance of higher duties.

Clause 10 - Constitution of Promotion Appeal Committees

This clause provides that a Promotion Appeal Committee shall comprise a Chairman, to be appointed by the Agency, a person nominated by the Secretary of the Department in which the promotion was made, and a person nominated by the appropriate staff organisation. It is envisaged that in the great majority of appeals the Chairman of the Committee would be a member of the staff of the Agency but provision has been made to enable other persons to be appointed.

Clause 11 - Conduct of hearings

This clause imposes on a Promotion Appeal Committee an obligation to make full enquiries into the claims of each party to the appeal proceedings.

Clause 12 - Member ceasing to act

This clause enables a Committee to be re-constituted if for any reason a member or members of the committee can no longer continue to sit on a particular appeal. The provision enables a reconstituted Committee to have regard to the proceedings of the previous Committee where 2 members of the reconstituted Committee were members of the previous Committee, or, in circumstances where only 1 member of the previous Committee is on the reconstituted Committee, when the parties agree. The provision is drawn from amendments to the promotion appeal process made by the Public Service Acts Amendment Act 1982.

Clause 13 - Split decisions

This clause provides for majority and split decisions of a Promotion Appeal Committee. The provision is drawn from the Public Service Act Amendment Act 1982.

Clause 14 - Places of sitting of Committee

This clause states that sittings of Committees may be held at such places in Australia as are approved by the Agency.

Clause 15 - Enactment may provide for promotion appeals to be heard by Promotion Appeal Committees

This clause makes provision to enable the terms and conditions of staff employed by Commonwealth authorities Act to provide for appeals relating to promotions and the temporary performance of higher duties to be made to Promotion Appeal Committees constituted under this subdivision. The clause contains provisions to enable the enactment that provides the terms and conditions of employment of statutory authority staff to make such modifications to the provisions relating to Promotion Appeal Committees as may be necessary. This ability to modify the provisions is necessary to recognise that statutory authorities not staffed under the Public Service Act may have different requirements in relation to the hearing of appeals than is the case with Public Service Act staff. It also recognises the need for technical changes; for example the management nominee on a Committee will not be nominated by the 'Secretary of the Department' but rather by the chief executive officer, however described, of the statutory authority. Appeals from staff in statutory authorities would only come to Committees constituted by the Agency where express provision is made to this effect. It is proposed that consultations would take place with statutory authorities and staff organisations before provision is made for promotion appeals to come to the Agency's committees.

Subdivision C - Disciplinary Appeal Committees

Clause 16 - Disciplinary Appeal Committees

This clause enables the Agency to arrange for the establishment of such Disciplinary Appeal Committees as are necessary for appeals arising from disciplinary action under the Public Service Act.

Clause 17 - Constitution of Disciplinary Appeal Committees

This clause provides that a Disciplinary Appeal Committee shall comprise a Chairman to be appointed by the Agency, a person nominated by the Chief Officer and a person nominated as provided by the regulations to represent officers. These constitution provisions are drawn from the existing section 63E of the Public Service Act which currently provides for the constitution of Disciplinary Appeal Boards. By virtue of sub-clause 17(2) a Chairman of a Disciplinary Appeal Committee is required to have legal qualifications. Sub-clause (3) ensures that any person who is involved with the laying of charges or holding of the inquiry in relation to the disciplinary action cannot be nominated by the Chief Officer. Sub-clause (4) enables a Disciplinary Appeal Committee to dispose of frivolous or vexatious appeals.

Clause 18 - Conduct of hearings

This clause empowers a Committee to take evidence on oath or affirmation.

Clause 19 - Member ceasing to act

This clause provides that if a member of a Committee for any reason ceases to be such a member or is unable to take any further part in the hearing of an appeal, with the consent of the appellant and the relevant Chief Officer, the remaining two members where they concur may determine the matter. Sub-clause (2) enables a new Disciplinary Appeal Committee, if it is necessary for one to be constituted, to have regard to evidence given, arguments adduced and reasons given by a previous Committee.

Clause 20 - Split decision

This clause enables majority decisions to be made when the members of a Committee do not concur in a decision. If there is no agreement between any of the three members of a Committee (for example when each member considers that a different form of punishment should be imposed) the clause provides for the decision of the Chairman to prevail.

Clause 21 - Enactment may provide for Disciplinary Appeals to be heard by Disciplinary Appeal Committees

This clause enables an enactment which provides for the terms and conditions of staff of statutory authorities not staffed under the Public Service Act to make provision to enable appeals relating to disciplinary action taken in those statutory authorities to be made to a Disciplinary Appeal Committee constituted under the provisions of this subdivision. As in the case of the Promotion Appeal Committees, provision is included to enable necessary modifications to be made to the constituting and procedural provisions so that they are properly matched to the requirements of statutory authorities. Disciplinary appeals from disciplinary action in statutory authorities will only come to Committees established under this legislation where this is expressly provided for in the terms and conditions of employment applying to statutory authority staff. It is proposed that there will be consultations with both the statutory authorities and relevant staff organisations before provision is made for statutory authority disciplinary matters to be the subject of appeals to Committees established under this legislation.

Subdivision D - Redeployment and Retirement Appeal Committees

Clause 22 - Redeployment and Retirement Appeal Committees

This clause enables the Agency to arrange for the establishment of Redeployment and Retirement Appeal Committees necessary for the purposes of the Commonwealth Employees (Redeployment and Retirement) Act 1979 and for the purposes of the special redeployment and retirement provisions for the proposed Senior Executive Service to be included in Division 88 of Part III of the Public Service Act by the Public Service Reform Bill.

Clause 23 - Constitution of Committees

This clause provides that Redeployment and Retirement Appeal Committees shall be constituted by a Chairman appointed by the Agency, by a person nominated as provided in regulations to represent either the relevant Department or Commonwealth authority or in certain cases, the Public

Service Board, and a person nominated as provided in the regulations to represent employees. In the case of Committees for the purposes of Senior Executive Service redeployment and retirement appeals the Committee will be constituted by a Chairman appointed by the Agency, a person nominated to represent the Board, and a person nominated in accordance with regulations to represent Senior Executive Service officers.

Clause 24 - Conduct of hearings

This clause empowers the Committee to take evidence on oath or affirmation.

Clause 25 - Member ceasing to act

This clause provides provisions relating to a member ceasing to act that are equivalent to those that apply in the case of Disciplinary Appeal Committees, that is, where a member is for any reason unable to continue to be a member of a Committee or otherwise take part in its deliberations the remaining two members may determine the appeal. Where, however, it is necessary to constitute a new Committee, that Committee can have regard to the evidence given, arguments adduced and reasons for decisions given during the previous hearing.

Clause 26 - Split decision

This clause provides for majority and split decisions.

Subdivision E - Re-appointment Review Committees

Clause 27 - Re-appointment Review Committees

This clause enables the Agency to arrange for such Re-appointment Review Committees as are required for the purposes of Division 3 of Part IV of the Public Service Act. (Part IV of the Public Service Act relates to the rights of officers of the Public Service who take up employment in other areas of Commonwealth employment. The function of Re-appointment

Review Committees is to assess the eligibility of former officers of the Service for re-appointment to the Service when their employment by a Commonwealth authority has been terminated.)

Clause 28 - Constitution of Committees

This clause provides that a Re-appointment Review Committee shall consist of a Chairman appointed by the Agency, a person nominated by the Board, and a person nominated by the appropriate staff organisation. In most circumstances, the Chairman of a Re-appointment Review Committee is a person who is also a Chairman of a Promotion Appeal Committee. Where a person's employment with a Commonwealth authority has been terminated for disciplinary reasons, the Chairman of a Re-appointment Review Committee is a person who is qualified to be the Chairman of a Disciplinary Appeal Committee.

Clauses 29 and 30 - Member ceasing to act and split decisions

Procedural provisions equivalent to those in clause 12 and 13 are included.

Subdivision F - Re-integration Assessment Committees

Clause 31 - Interpretation

This clause defines the terms 'application' and 'relevant Act' for the purpose of the subdivision.

Clause 32 - Re-integration Assessment Committees

This clause enables the Agency to arrange for the establishment of Re-integration Assessment Committees necessary for the purposes of the Members of Parliament (Staff) Act 1984. The explanatory memorandum accompanying the Members of Parliament (Staff) Bill outlines the purpose of these Committees. In brief, the Committees will assess the level at which officers of the APS who are employed by Ministers and Members should be placed on their return to the Service.

Clause 33 - Constitution of Committees

A Re-integration Assessment Committee will comprise a person appointed as Chairman by the Agency, a person nominated by the Board and a person nominated by the appropriate staff organisation.

Clauses 34 and 35 - Member ceasing to act and split decisions

Procedural provisions equivalent to those in clauses 12 and 13 are included.

Subdivision G - Miscellaneous

The following provisions are common to all the Review Committees.

Clause 36 - Members not subject to direction

This clause makes express provision that while a person is acting as a member of a Review Committee, he or she is not subject to direction by any other person or by any body or authority. This provision is an extension of previously existing provisions of this type that related to particular Review Committees, in that it applies not only to the Chairmen of such Committees but also to other members.

Clause 37 - Procedure of Review Committees

This clause makes common provision in relation to the procedure of Review Committees and in particular provides that the procedures of Committees, subject to any relevant legislative requirements, are within the discretion of the Committees, that proceedings are to be conducted with as little formality as is appropriate to a proper consideration of the matter before the Committee, and that the Committees are not bound by the rules of evidence.

Division 3 - Review of Certain Decisions

Clause 38 - Interpretation

The clause defines 'decision' for the purposes of the Agency's function to review certain decisions under this Division as a decision relating to a Commonwealth employee that relates to his or her employment.

Clause 39 - Agency may review certain decisions

This clause provides that an enactment that relates to the terms and conditions of employment of a Commonwealth employee may provide that applications may be made to the Agency for the Agency to review certain specified decisions. At present there are, in the terms and conditions of employment applying to staff of the APS, a number of rights of review in relation to particular decisions. For example, the decision of a Secretary of a Department to defer an increment may be reviewed by the Board; a decision of a Chief Officer not to grant certain types of leave may also be reviewed by the Board. It is envisaged that the terms and conditions of employment that at present provide a right of review by the Board will be amended so as to permit a right to apply to the Agency for review of those decisions..

Sub-clause (2) provides that the terms and conditions of employment are to specify the decision that may be reviewed by the Agency and enables the types of decision that can be reviewed to be specified in detail. Sub-clause (3) enables application to be made to the Agency even where the decision has initially been taken by a delegate. Sub-clause (4) provides that the terms and conditions of employment providing for application to the Agency must specify whether the decision is one that is to be reviewed under proposed section 42 or under proposed section 43. As detailed below, if a decision is reviewed under section 42 the Agency may substitute its decision for that of the primary decision-maker, whereas if it is reviewed under proposed section 43 the Agency may only recommend a proposed course of action to the primary decision-maker. Sub-clause (5) provides the head of power to enable the Agency to review decisions in respect of which applications have been made to it under the terms and conditions of employment applying to staff. Sub-clause (6) includes in the concept of making a decision the

failure of a person to take a decision within a required time period. Sub-clause (7) makes provision to recognise that the person who took the initial decision may no longer occupy the position at the time at which it is to be reviewed.

Clause 40 - Persons who may apply to Agency

This clause provides that persons who may apply to the Agency are persons whose terms and conditions of employment provide a right to make applications concerning decisions relating to employment to the Agency.

Clause 41 - Procedures of Agency in conduct of reviews

Under this provision the Agency is required to give the employee and the person who took the initial decision a reasonable opportunity to put their views on the decision to the Agency. Sub-clause (2) provides that the procedures of the Agency in considering applications under this Division are, subject to relevant statutory provisions, within the discretion of the Agency.

Clause 42 - Review by Agency that may give rise to new decision

This clause empowers the Agency to exercise all the powers and discretions that the primary decision-maker had in relation to matters that are brought to the Agency and which are expressed to be reviewable under this head of power. The Agency is empowered under this clause to affirm the decision under review, to vary the decision under review or to set aside the decision, making a decision in substitution for the decision so set aside or remitting a matter for reconsideration in accordance with any directions or recommendations that the Agency may wish to make. These powers are comparable to those currently included in the Public Service Regulations where reviews are provided on the merits of certain decisions.

Clause 43 - Review by Agency that may give rise to recommendation only

This clause enables the Agency to take a decision relating to an application that is brought to the Agency, and which is expressed to be reviewable under this clause, to affirm a decision or to make a recommendation relating to the decision. Under clause 42 and this clause the Agency is required to inform both the applicant and the

decision-maker of its conclusions and in the case of reviews under this clause where the Agency's decision does not operate in substitution for that of the primary decision-maker, there is imposed on the primary decision-maker an obligation to reconsider the matter having regard to the Agency's recommendation. The Agency is permitted to report to the Prime Minister and to the Parliament in the same manner as relates to grievances under Division 4. See clauses 52 and 53.

Clause 44 - Agency may seek views of Public Service Board

This clause enables the Agency to request comments from the Board in relation to particular decisions that the Agency is reviewing under this Division.

Clause 45 - Applications by former Commonwealth employees

This clause deems persons who have ceased to be Commonwealth employees to continue to be such employees for the purposes of enabling the Agency to review decisions that are expressed to be subject to review under this Division and which relate to the former officer's employment.

Division 4 - Grievances

Whereas Division 3 related to the review of particular statutory decisions, Division 4 provides for other general employment grievances to be investigated by the Agency.

Clause 46 - Interpretation

This clause provides definitions of various terms used in this Division and includes sub-clauses (2) to (5), the effect of which is to equate action taken by particular persons within a Department or authority with action taken by the Department or authority.

Clause 47 - Agency may inquire into certain grievances

Sub-clauses (1) and (2) provide that an enactment providing for the terms and conditions of employment of Commonwealth employees may provide that applications may be made to the Agency, subject to any specified

conditions, for the investigation of actions relating to a person's employment. Sub-clause (3) empowers the Agency to investigate action in respect of which application has been made under a person's terms and conditions of employment. Sub-clause (4) includes the failure to take action as being action that can be investigated by the Agency.

Clause 43 - Persons who may apply to Agency

This clause specifies that an application may be made to the Agency where that right is provided in an employee's terms and conditions of employment. It is envisaged that the terms and conditions of employment of staff both within the APS and in certain Commonwealth authorities will include provisions, the effect of which will be to require staff to raise grievances in the first instance within their own organisations, and it will only be when such action has not served to resolve the grievance that staff will be able to take the further step of approaching the Agency to request it to investigate the action complained of. This two-stage approach to the resolution of employment grievances is considered to be consistent with the interests of sound personnel management practice. In the APS at present the arrangement is that, wherever possible, grievances should be resolved in the first instance within Departments. It is only when this has not been successful that the Board has become involved in the resolution of those grievances. In many cases, it is possible for grievances to be resolved by supervisors or management staff within Departments. It is desired that this practice should continue to the fullest extent possible.

Clause 49 - Discretion not to investigate

This clause enables the Agency to decide not to investigate actions complained of in certain circumstances. The provisions are broadly equivalent to provisions contained in the Ombudsman Act 1976.

Clause 50 - Employee may apply to Agency for investigation of certain grievances

This clause provides for certain exceptions to the two stage process described above in relation to clause 48. Under this clause an employee may apply directly to the Agency in the following circumstances; firstly,

where the grievance relates to harassment for taking action in relation to other grievances, and secondly, where the matter to be raised is one of such sensitivity that it cannot appropriately be dealt with in the first instance by the employee's Department.

Under this clause the Agency is given a discretion as to whether it will investigate the matter that has been raised directly with it. This direct access to the Agency is only available to staff who would be able to apply to the Agency through the Department or authority in the normal way under clause 48.

Clause 51 - Agency to inquire into grievances

This clause imposes on the Agency an obligation to inquire into actions that are the subject of grievances brought to the Agency and to attempt to resolve the employee's grievance by counselling the employee and relevant officers of the Department or authority, conciliating between the employee and the Department or authority, making a finding of fact or making a recommendation. Sub-clause (2) enables the Agency to make a finding of fact. The purpose of this provision is to provide a means of settling grievances that turn on questions of fact. Sub-clauses (3), (4) and (5) relate to the Agency's power to make recommendations to resolve employment-related grievances. Where, after investigation into the action complained of, the Agency considers that, having regard to sound management practices, the efficiency of the Department or authority and the desirability of harmonious staff relationships, the action complained of was wrong and that certain action could be taken to remedy the situation, the Agency may report accordingly to the Department or authority. Under this clause, the Agency is empowered to request from the Department or authority details of any action that it proposes to take on the Agency's report.

Clause 52 - Reports to Prime Minister

This clause provides a power, equivalent to that in the Ombudsman Act, enabling the Agency to report to the Prime Minister where adequate and appropriate action has not been taken in relation to the report of the Agency to the Department or authority.

Clause 53 - Special reports to Parliament

This clause empowers the Agency, when it has made a report to the Prime Minister under clause 52, to forward a report for presentation in the Senate and the House of Representatives.

Clause 54 - Conduct of investigation

This clause provides for the Agency to inform the Department of the commencement of an investigation without requiring personal representation before the Agency during the investigation

Clause 55 - Applications by former Commonwealth employees

This clause deems persons who have ceased to be Commonwealth employees to continue to be such employees to enable the Agency to consider grievances relating to employment that arise after the person has ceased to be an employee. The Board currently handles the grievances of former staff members on an informal basis and the purpose of this provision is to provide a statutory basis for that role.

Division 5 - InquiriesClause 56 - Inquiries by Agency

This clause permits the Minister (that is, the Minister administering this legislation) or the Public Service Board to request the Agency to conduct an inquiry into a decision or action taken in relation to a Commonwealth employee in relation to his employment. Under this provision the Agency will conduct an inquiry into the matter referred to it and provide to the Minister or the Board a report on the matter. It is envisaged that use may be made of this provision where there are particularly contentious matters relating to decisions or action taken in relation to particular employees, but which are not appropriately dealt with as investigations under Division 4.

Division 6 - Provision of Advice on Grievances and AppealsClause 57 - Agency to provide, on request, advice on grievance and appeal rights

This clause imposes on the Agency an obligation to provide advice to staff who request information relating to any relevant appeal, review or grievance rights that they may have under the proposed legislation.

Clause 58 - Procedure

This clause makes certain common provisions relating to the procedure of the Agency in the performance of its review, investigation and inquiry roles under Divisions 3, 4 and 5. The Agency is to proceed in private and, subject to any legislative requirements, in such manner as it thinks fit. The Agency is empowered to obtain information from such persons, and make such inquiries as it thinks fit.

Division 7 - Procedure and PowersClause 59 - Power to obtain information and documents

This clause enables the Agency to require the furnishing of information or production of documents that it considers may assist it in the exercise of its functions.

Clause 60 - Power to examine witnesses

This clause empowers the Director of the Agency to administer an oath or affirmation.

Clause 61 - Power to enter premises

This clause enables an authorised person at any reasonable time to enter any place occupied by a Department or authority for the purposes of the functions of the Agency.

Clause 62 - Powers of delegates

The effect of this clause is to enable a delegate of the Agency to exercise the powers of the Director of the Agency in relation to the obtaining of information or examination of witnesses under clauses 59 or 60.

PART III CONSTITUTION AND ORGANIZATION OF AGENCY

Clause 63 - Constitution of Agency

This clause provides that the Agency shall consist of a Director and not less than 2 and not more than 4 other members, all of whom are to be appointed by the Governor-General. The Director will be appointed on a full-time basis and up to 2 of the other members may also be full-time. It is the Government's intention that the membership of the Agency will reflect management and staff organisation interests and be of appropriate status. One full-time member will be selected after consultations between the Minister or his representative and the ACTU.

Clause 64 - Period of appointment of members

The Director is to hold office for up to 7 years and members are to hold office for up to 5 years.

Clause 65 - Remuneration and Allowances of Members

This clause makes provision for determination of remuneration by the Remuneration Tribunal.

Clause 66 - Leave of absence

This clause empowers the Minister to grant leave of absence to members of the Agency.

Clause 67 - Outside employment

This clause prohibits a full-time member from engaging in outside employment without the consent of the Minister.

Clause 68 - Resignation

This clause enables a member to resign his office.

Clause 69 - Acting Director

Provision is made to enable the Minister to appoint a person to act as Director.

Clause 70 - Acting member

Provisions is made to enable the Minister to appoint a person to act as a member.

Clause 71 - Meetings of Agency

This clause makes provision for the Agency to hold meetings and for the conduct of such meetings.

Clause 72 - Disclosure of interests of member in relation to reviews and inquiries

Provision is included to require a member, when reviewing a decision or conducting an inquiry, to disclose to the persons concerned any interest that could conflict with the proper conduct of the review or inquiry.

Clause 73 - Disclosure of interests of members in other matters

This clause requires declaration by a member of any pecuniary interests in a matter before the Agency.

Clause 74 - Retirement

Provision is made for the Governor-General to retire a member on the ground of physical or mental incapacity with the member's consent.

Clause 75 - Suspension and removal of member

Provisions are included for the suspension and removal of members from office. The removal may only be effected after a statement has been tabled in each House of the Parliament.

Clause 76 - Superannuation

Consequential provision is made so that the removal of a member from office on the ground of physical or mental incapacity under clause 74 is to be deemed to be retirement on ground of invalidity for the purposes of the Superannuation Act 1976.

Clause 77 - Staff

The staff of the Agency will be persons appointed or employed under the Public Service Act 1922. The Director of the Agency will have the powers of a Secretary. Staff of the Agency will thus be under the control of the Director of the Agency and independent from any powers of direction from either the Board or other Departments.

Clause 78 - Delegation by Agency

The clause enables the Agency to delegate its powers and functions.

Clause 79 - Delegation by Director

This clause enables the Director to delegate powers vested in him under this legislation.

PART IV - MISCELLANEOUS

Clause 80 - Agency not to be sued

The provision protects the Agency, its members and persons acting under its direction or authority, from liability for actions taken in good faith.

Clause 81 - Offences

Penalty provisions are included in relation to non-compliance with powers relating to the provision of information and giving of evidence or producing documents when required under the legislation, in relation to furnishing false or misleading information and in relation to obstructing, hindering or disrupting the proceedings of the Agency.

Clause 82 - Protection from civil actions

This clause protects persons from civil actions by reason of their making an application to the Agency or providing information to the Agency in accordance with provisions of the legislation.

Clause 83 - Annual Report

This clause requires the Agency to provide an Annual Report to the Minister. In particular the Agency will be required to include in its Annual Report a listing of the kinds of decisions in relation to which applications can be made to the Agency under Division 3 for review.

Clause 84 - Officers to observe secrecy

This clause imposes on members and staff of the Agency an obligation not to divulge any information obtained in the course of their duties. This provision is comparable to that included in the Ombudsman Act and is considered desirable to ensure that staff can have their grievances dealt with by the Agency, secure in the knowledge that matters raised by them will be kept in confidence.

Clause 85 - Regulations

Provision is made empowering the Governor-General to make regulations prescribing matters required to be dealt with by regulation under the legislation. The principal heads of power relate to the proceedings of the various Review Committees constituted under Division 2. These heads of power are comparable to provisions currently included in the Public Service Act, e.g. in relation to the procedures for Promotions Appeal Committees and Disciplinary Appeal Committees. Provision is also included to enable regulations to be made applying the provisions of this legislation, subject to any necessary modifications and adaptations that are included in the regulations, to the other areas of Commonwealth employment that are not comprehended by the APS or by the definition of 'Commonwealth authority'.