

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**PRIME MINISTER AND CABINET
(MISCELLANEOUS PROVISIONS) BILL 1994**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

(Circulated by authority of the Prime Minister, the Hon P J Keating MP)



PRIME MINISTER AND CABINET
(MISCELLANEOUS PROVISIONS) BILL 1994

OUTLINE AND FINANCIAL IMPACT STATEMENT

The Prime Minister and Cabinet (Miscellaneous Provisions) Bill 1994 (the Bill) amends a number of Acts, most of which fall within the portfolio of the Prime Minister. Consequent upon certain amendments to the *Public Service Act 1922*, the Bill also makes amendments to the *Superannuation Act 1976*.

These amendments are necessary to take account of recent machinery of Government changes. In addition, other amendments to Part 9 of the Bill (clauses 57 to 63), which are technical in nature, will:

- extend the application of the new involuntary retirement arrangements inserted in the *Superannuation Act 1976* (the 1976 Act) by Part 9 of the Bill to persons formerly employed or appointed on a fixed-term basis who, in accordance with a direction of the Prime Minister under subsection 37(6) or 87ZCA(1) of the "Public Service Act 1922" continue as officers for a specified period after their appointment expires or is terminated or their office is abolished;
- provide, in line with existing arrangements in the 1976 Act, that a person who ceases to be a CSS member by reason of invalidity retirement would be entitled to receive invalidity benefits not involuntary retirement benefits;
- make corrections to the proposed definition of 'fixed-term employee' and to the proposed savings provisions to ensure they achieve their intention; and
- in line with the existing arrangements in the 1976 Act, ensure that persons covered by the new involuntary retirement arrangements would be eligible for early retirement benefits where appropriate.

The amendments will have no financial impact.

NOTES ON AMENDMENTS

Amendment 1

Part 6 of the Bill amends the *Ombudsman Act 1976*. Clause 18 inserts into that Act a number of definitions, including a definition of the term "Parliamentary Department", the purpose of which is to extend the Ombudsman's jurisdiction to those Departments.

The Public Service (Parliamentary Departments) Amendment Bill 1994 which was introduced into the House of Representatives on 24 November 1993, will create a new Department known as the Department of the Parliamentary Library and Reporting Services. That Department will replace the existing Department of the Parliamentary Library and the Department of the Parliamentary Reporting Services.

Amendment 1 will have the effect of omitting the definition of "Parliamentary Department" which the Bill inserts into the *Ombudsman Act 1976* and substituting a new definition which will refer to the Department of the Parliamentary Library and Reporting Services from the date on which that Department comes into existence.

Amendments 2 - 9

Clause 51 in Part 7 of the Bill repeals Schedules 2 and 3 to the *Public Service Act 1922* and substitutes two new Schedules. Schedules 2 and 3 respectively set out the names of the various Departments and the Secretaries who, along with other staff, constitute the Australian Public Service.

Amendments 2 - 9 (inclusive) make various changes to Schedules 2 and 3 as set out in the Bill to take account of recent machinery of Government changes.

Amendment 10

Section 36 of the *Public Service Act 1922* provides for the appointment of Secretaries of Departments. Subsection 37(1) of that Act provides that, in certain circumstances, an appointment to an office of Secretary is a fixed-term appointment for the purposes of section 37.

Paragraph (a) of the definition of "fixed-term employee" in section 57B of the *Superannuation Act 1976* (the 1976 Act), as inserted by clause 57 of the Bill, would refer to a person who holds an office of Secretary by virtue of an appointment under section 37 of the Public Service Act. This amendment modifies proposed paragraph (a) of the definition so that it refers to a person who holds an office of Secretary under an appointment that is a fixed-term appointment for the purposes of section 37 of the Public Service Act, in order to align it more closely with the provisions in that Act.

Amendment 11

Clauses 31 and 49 of the Bill would insert new provisions (proposed subsections 37(6) and 87ZCA(1)) in the *Public Service Act 1922* to permit the Prime Minister to direct, after the occurrence of certain events, that a person who holds an office of Secretary on a fixed-term basis, or a Commonwealth office, is taken not to have retired or resigned from the Australian Public Service, but to have continued as an officer until a specified date.

This amendment would insert two new subsections which are associated with the above provisions into proposed section 57B of the 1976 Act.

New subsection 57B(2) of the 1976 Act would have the effect that, where a person ceases to hold an office of Secretary on a fixed-term basis and a direction has been issued under subsection 37(6) of the *Public Service Act* that the person continues to be an officer, Division 2 of Part V of the 1976 Act applies as if the person continued to hold that office. When the person ceases to be an officer in accordance with the direction he or she will be taken to have ceased for the same reason that the appointment as Secretary ceased (ie, either their appointment expired or was terminated or their office was abolished) and the person will be taken to have ceased to be an eligible employee for the purposes of the Act (ie, a contributor) because of that deemed event. This will enable the new provisions relating to involuntary retirement, inserted in Division 2 of Part 5 of the 1976 Act by the Bill, to apply to former fixed term appointees to an office of Secretary who are required to continue as officers.

New subsection 57B(3) provides for a similar arrangement in respect of a person who ceases to hold a Commonwealth office within the meaning of Part IV of the *Public Service Act 1922* and a direction under subsection 87ZCA(1) of that Act has been issued.

Amendment 12

This amendment omits clause 58 in the Bill and substitutes a re-drafted clause 58. The existing clause 58 amended subsection 58(3) of the 1976 Act by the removal of paragraph 58(3)(d). The revised clause 58 will:

- revise subsection 58(1) of the 1976 Act so that, in addition to its existing provisions which specify the situations under which a person shall be deemed to have ceased to be an eligible employee for the purposes of the Act by reason of early retirement, the subsection provides that a person shall be deemed to have ceased to be an eligible employee by reason of early retirement if he or she is deemed by section 58A or 58B (as inserted by clause 59 of the Bill) to have retired involuntarily. This will provide eligibility for early retirement benefits where appropriate;

- omit paragraph 58(3)(c) of the 1976 Act, which is, in effect, replaced by new subsection 58A; and

provide that subsection 58(4) of the 1976 Act, which specifies that subsections 58(2) and (3) of that Act do not apply to persons with less than one year of contributory service or who cease on the grounds of invalidity, is extended to also cover the new sections 58A and 58B.

Amendment 13

This amends the savings provision in subclause 63(1) of the Bill which provides that certain persons who would have been deemed to have retired involuntarily in accordance with paragraph 58(3)(c) of the 1976 Act which is repealed by clause 58 may be deemed to have retired involuntarily after the repeal of that paragraph. The amendment will ensure that this will not apply to a person who ceases to be a member of the CSS because of retirement on the ground of invalidity. This reflects the existing arrangements in section 58 of the 1976 Act. The intention is that such persons are to be entitled to invalidity benefits, not early retirement benefits.

Amendment 14

This amendment modifies the savings provision contained in subclause 63(3) to ensure that the provisions achieves its intention to continue for existing eligible employees the arrangements applying where a person's office or position ceases to exist.

Under the existing provisions of the 1976 Act, where a person (other than a person who is a temporary employee for the purposes of the 1976 Act) ceases to be an eligible employee because their position or office ceases to exist the person will be deemed to have retired involuntarily. Subclause 63(3) would provide that persons who were eligible employees immediately before the commencement of the clause who at that time would have been a fixed term employee, within the terms of the definition of that term as inserted by clause 57 of the Bill, will not be deemed to have retired involuntarily if their office or position ceases to exist. This would, however, include persons who are not temporary employees for the purposes of the 1976 Act, for example, fixed term appointees who are officers for the purposes of the *Public Service Act 1922*. The amendment would ensure that the saved provisions apply only to those persons to whom they would have applied before the commencement of the clause.

