

1995

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**SENATE**

**PRIME MINISTER AND CABINET  
(MISCELLANEOUS PROVISIONS) BILL 1995**

**EXPLANATORY MEMORANDUM**

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





**PRIME MINISTER AND CABINET  
(MISCELLANEOUS PROVISIONS) BILL 1995**

**OUTLINE**

This Bill proposes a number of amendments to legislation administered within the portfolio of the Prime Minister and also to the *Parliamentary Allowances Act 1952* which is administered by the Minister for Administrative Services.

**Economic Planning Advisory Council Act 1983**

The purpose of these amendments is to build on the achievements of the Economic Planning Advisory Council (the Council) by enhancing its public information role and extending its activities by establishing a capacity for special project work. The amendments will abolish the Council and establish the Economic Planning Advisory Commission (the Commission). The Commission will have a range of expanded functions which will allow it to focus more directly on the provision of advice to Government on medium to long term social and economic issues.

**Parliamentary Allowances Act 1952 and Parliamentary Presiding Officers Act 1965**

The Bill makes minor technical amendments to these Acts to update references to the titles of the Deputy Presiding Officers.

**Public Service Act 1922**

Section 25 of the Act will be amended to implement the recommendation of the Joint Committee of Public Accounts that Departmental annual reports be tabled by 31 October each year.

Other amendments to the Act are largely technical and are intended to facilitate management of the Parliamentary Departments.

**FINANCIAL IMPACT STATEMENT**

The amendments of the *Economic Planning Advisory Council Act 1983* will result in some minor additional costs. The remaining amendments are not expected to have any financial impact.

**NOTES ON CLAUSES****PRELIMINARY**Clause 1: Short title

The Act will be called the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1995*.

Clause 2: Commencement

Clause 2 provides for the Act to commence on the day on which it receives Royal Assent.

Clause 3: Amendments

Clause 3 provides for the Acts referred to in the Schedule to the Bill to be amended in the manner set out in that Schedule.

**SCHEDULE****PART 1 - AMENDMENTS OF THE ECONOMIC PLANNING  
ADVISORY COUNCIL ACT 1983****Summary of proposed changes**

The purpose of these amendments is to build on the achievements of the Economic Planning Advisory Council (the Council) by enhancing its public information role and extending its activities by establishing a capacity for special project work. The Council will be abolished and reconstituted as the Economic Planning Advisory Commission (the Commission). The Commission will have a range of expanded functions which will allow it to focus more directly on the provision of advice to Government on medium to long term social and economic issues. The Commissioner, who will be appointed by the Minister, will have the powers of a Secretary under the *Public Service Act 1922* in relation to the staff of the Commission.

**Details**

Item 1 of the Schedule would change the long title of the Act to refer to the Economic Planning and Advisory Commission, rather than the Economic Planning and Advisory Council.

Item 3 would change the short title of the Act to allow it to be known as the *Economic Planning Advisory Commission Act 1983*.

Item 4 would repeal section 3 of the Act which contained definitions of the terms used in the Act and substitutes a section with new definitions.

Item 5 would provide for the repeal of Parts II to V of the Act and replace them with new Parts 2 to 4 containing new sections 4 - 20.

New Part 2 (sections 4 - 8) of the Act would provide for the establishment of the Commission and set out its functions and powers.

New section 4 would establish a body by the name of the Economic Planning Advisory Commission.

New section 5 would provide that the Commission would be constituted by the Commissioner. The Commissioner would be responsible, under the direction of the Minister, for the performance of the Commission's functions.

New section 6 describes the functions of the Commission. They would be:

to investigate and provide, or assist in the investigation and provision of, information and advice to the Minister on matters relating to medium and long-term economic and social issues;

to promote public debate on and understanding of economic and social issues;

to undertake special projects, at the request of the Minister, relating to medium and long-term economic and social issues; and

to seek and report on the views of persons in industry, the trade union movement and the community generally in connection with the preparation of the annual Budget.

New section 7 would provide the Commission with the power to do all things necessary or convenient for the performance of its functions. The powers of the Commission would include, but not be limited to:

organising meetings at the Minister's direction and providing secretarial support to other bodies established to consider medium and long term economic and social issues;

with the agreement of the Minister, providing information to other persons and bodies inquiring into medium and long term economic and social issues; and

organising and participating in seminars and conferences on subjects related to its functions.

New section 8 deals with the publication of Commission reports and papers in terms similar to existing section 7 of the Act. Section 8 would provide that the Minister may publish a report provided by the Commission by, for example, presenting it to the Parliament. New subsection 8(3) would allow the Minister to remove sensitive economic information from a report before it is published if he is satisfied that publication of that information should be withheld in the public interest. If a report is published with deletions, the Minister must make it known that deletions were made [new subsection 8(4)].

New Part 3 (sections 9 - 17) of the Act deals with the appointment of the Commissioner and staff of the Commission and the engagement of consultants.

New section 9 would provide that the Commissioner is to be appointed by the Minister and is to hold office for the period (not longer than 5 years) stated in the instrument of appointment. The Commissioner may be re-appointed.

New section 10 would provide that the Commissioner's remuneration and allowances are to be set by the Remuneration Tribunal. However, if there is no Remuneration Tribunal determination in force, the Commissioner's remuneration and allowances would be as prescribed by regulation. The Commissioner would also be entitled to such other allowances as are prescribed.

New section 11 would provide that, subject to section 87E of the *Public Service Act 1922* (which preserves the leave entitlements of Commonwealth officers appointed to public offices or employed by public authorities), the Commissioner would be entitled to recreation leave as determined by the Remuneration Tribunal. The Commissioner would also be entitled to leave of absence, other than recreation leave, on terms and conditions that the Minister determines.

New sections 12 and 13 concern the termination of the Commissioner's appointment. Section 12 would provide that he or she may resign by advising the Minister of the resignation in writing. New subsection 13(1) would enable the Minister to end the Commissioner's appointment either because of misbehaviour or because of physical or mental incapacity, while new subsection 13(2) would provide that the Minister must terminate the appointment if the Commissioner were to:

- engage in paid employment outside the duties of the Commissioner of the Commission without the Minister's approval;
- be absent from duty, except on leave of absence for 14 consecutive days or 28 days in any 12 months; or
- become bankrupt.

New section 14 would provide that any of the Commissioner's terms and conditions of employment not dealt with in the Act are to be determined by the Minister.

New section 15 would provide that the Minister may appoint an acting Commissioner during a vacancy in the office or during periods when the Commissioner is absent from duty, overseas or otherwise unable to perform the functions of the office.

Under new subsection 16(1), Commission staff would be appointed or employed under the *Public Service Act 1922*. New subsection 16(2) would confer on the Commissioner all the powers of a Departmental Secretary under the *Public Service Act 1922* in relation to Commission staff.

New section 17 would allow the Commissioner, on behalf of the Commonwealth, to engage suitably qualified persons as consultants. The terms and conditions of these consultants would be determined by the Commissioner.

New sections 18 - 20 (Part 4) contain miscellaneous provisions relating to the new Commission. New section 18 relates to the Commission's annual report, while new section 19 would allow the Governor-General to make regulations under the Act. Section 20 is a transitional provision which would provide, for example, that a reference to the Economic Planning Advisory Council in contracts and other legal instruments will be deemed to be a reference to the Economic Planning Advisory Commission.

## **PART 2 - AMENDMENTS OF THE PARLIAMENTARY ALLOWANCES ACT 1952**

### **Summary of proposed changes**

The Chairman of Committees of the Senate and the Chairman of Committees of the House of Representatives are now known as the Deputy President and Chairman of Committees of the Senate and Deputy Speaker of the House of Representatives, respectively. The amendments to be made by this Part of the Schedule would update references to those offices. They would also remove gender specific language used in the Act.

### **Details**

Items 6 to 9 of the Schedule would remove gender specific language in various provisions of the Parliamentary Allowances Act.

Item 10 would amend paragraph 6(1)(b) of the Act which provides that, in certain circumstances, the "Chairman of Committees of the Senate or the House of Representatives" is entitled to receive the allowances that would be payable to the President or the Speaker, as the case may be. This amendment would omit the words "Chairman of Committees of the Senate or the House of Representatives" and substitute the words "Deputy President and Chairman of Committees of the Senate or Deputy Speaker of the House of Representatives".

Item 11 would substitute existing subsections 6(4) and (5) with two new subsections. Subsections 6(4) and (5) provide that, if a "Chairman of Committees of the Senate" or a "Chairman of Committees of the House of Representatives" is re-elected at an election, the allowances payable to them continue to be payable after the election until a new Deputy President or Deputy Speaker is chosen. New subsections (4) and (5) would ensure that these offices are correctly referred to in the Act.

## **PART 3 - AMENDMENT OF THE PARLIAMENTARY PRESIDING OFFICERS ACT 1965**

### **Summary of proposed changes**

This amendment would correct the reference to the Deputy Speaker's title.

## **Details**

The Parliamentary Presiding Officers Act relates to the exercise of the functions and powers of the President and the Speaker and the Deputy President and Deputy Speaker in certain circumstances. It provides, for example, that a "Deputy Presiding Officer" shall be deemed to be the Presiding Officer in the event of the death, absence or incapacity of the Presiding Officer. "Deputy Presiding Officer", is defined, in relation to the House of Representatives, to mean the "Deputy Speaker and Chairman of Committees".

Item 12 is a minor technical amendment which would ensure that the Act reflects correctly the current title of the Deputy Speaker of the House of Representatives.

## **PART 4 - AMENDMENTS OF THE PUBLIC SERVICE ACT 1922**

### **Summary of proposed changes**

These amendments would achieve two separate purposes.

Section 25 of the Act would be amended to implement the agreement between the Prime Minister and the Joint Committee of Public Accounts (JCPA) to table Departmental annual reports by 31 October each year.

The amendments will also facilitate personnel management in the Parliamentary Departments by:

allowing the Presiding Officers to delegate their powers under the Act;

allowing the Presiding Officers to cancel a promotion after it has taken effect following a review by the Merit Protection and Review Agency;

giving the Presiding Officers the power, similar to that exercisable by a Secretary under section 50G of the Act, to cancel a promotion before it has taken effect; and

- giving the Presiding Officers the power to approve promotions following a Joint Selection Committee process.

The amendments to the Act which would implement these changes in relation to Parliamentary Departments would be contained in a new Schedule to the Public Service Act. That Schedule is set out in Part 5 of the Prime Minister and Cabinet (Miscellaneous Provisions) Bill.

### **Details**

Sections 9, 9A, 9AA and 9B of the Public Service Act generally confer on the Presiding Officers in relation to the management of the Parliamentary Departments many of the functions and powers of the Public Service Commissioner in relation to a Department of State. The President and the Speaker are conferred with the powers of the Commissioner in relation to the Department of the Senate and the Department of the House of Representatives, respectively,

while the President and the Speaker jointly exercise the Commissioner's powers in relation to the Departments of the Parliamentary Library and the Parliamentary Reporting Staff and the Joint House Department. In particular, the Presiding Officers are responsible for the appointment or promotion of officers in the Parliamentary Departments.

These provisions also confer on the Head of a Parliamentary Department (the Clerk of the Senate, the Clerk of the House of Representatives, the Parliamentary Librarian, the Principal Parliamentary Reporter and the Secretary to the Joint House Department) in relation to their respective Departments the powers of a Secretary in relation to a Department of State. The Heads of the Parliamentary Departments are responsible for the transfer of officers in the Parliamentary Departments.

At present, the Presiding Officers may only delegate to employees of the Parliament their powers under subsections 9(7A) and (7F) of the Act to determine the terms and conditions of employment of officers and employees of Parliamentary Departments.

Item 13 of the Schedule would omit subsections 9(7H), (7J) and (7K) (which deal with the delegation of those powers) and substitute a new subsection 9(7H) which would enable the Presiding Officers to delegate all of their powers under the Act, except the power to recommend certain matters to the Governor-General. This would allow the Presiding Officers to delegate a range of powers in relation to the management of the Parliamentary Departments, including the power to appoint and promote staff, to create and abolish positions and raise or lower classifications, to officers or employees of the Parliament.

Item 14 would amend subsection 9(2AA) of the Act to include a reference to new section 9AB.

Item 15 would insert new section 9AB. New section 9AB contains definitions of terms used in a new Schedule 4 to the Public Service Act to be inserted by Item 17 of the Bill. In particular, it defines the term "responsible authority" in relation to promotions and transfers, and the creation and abolition of offices, in the Parliamentary Departments. The term is given various meanings, depending on the context in which it is to be used. For example, if it is being used in the context of a promotion or the creation or abolition of an office in a Parliamentary Department, it is defined to mean the relevant Presiding Officer or both Presiding Officers, as the case requires. If it is being used in the context of a transfer to an office in a Parliamentary Department, it would mean the Head of the relevant Parliamentary Department.

Item 16 of the Schedule would omit subsections 25(6) to (8) of the Public Service Act and substitute new subsections 25(6) to (8E). These new provisions would implement the recommendations of the Joint Committee of Public Accounts (JCPA) relating to the tabling of the annual reports of Departments.

Subsections 25(6) to (8) of the Act relate to the preparation and tabling of annual reports of Commonwealth Departments. A Secretary of a Commonwealth Department is presently required, as soon as practicable after 30 June each year, to prepare and furnish to the Minister administering the Department an annual report on the operation of the Department.

Subsection 25(7) requires annual reports to accord with requirements approved by the JCPA. Under subsection 25(8), the Minister administering a Department is required to table its annual report in each House within 15 sitting days of receiving it.

Section 34C of the Acts Interpretation Act provides that where an Act requires a person to furnish a periodic report, such as an annual report, to a Minister, but does not specify a date by which the report is to be furnished, the report is to be furnished within 6 months after the end of the period to which the report relates. In the case of Departmental annual reports, therefore, the current rules require annual reports to be furnished to Ministers by 31 December each year. Ministers are allowed a further 15 sitting days in which to table reports. In practice, however, Ministers have for some years been tabling annual reports by 31 December.

New subsections 25(6) - (8E) would implement the agreement between the Prime Minister and the JCPA to table Departmental annual reports by 31 October each year.

New subsection 25(6) would require the Secretary of a Department to prepare an annual report as soon as practicable after 30 June each year and give it to the Minister by 15 October.

New subsection 25(7) would be identical to existing subsection 25(7), which requires annual reports to accord with requirements approved by the JCPA.

New subsection 25(8) would require the Minister to table the annual report by 31 October.

New subsection 25(8A) would allow a Secretary who forms the opinion that it will not be possible to give the report to the Minister by 15 October to apply to the Minister for an extension of time. New subsection 25(8B) would require a Secretary who applies for an extension of time to explain to the Minister in writing why it will not be possible to meet the 15 October deadline and would allow the Minister to grant any extension that he or she considers reasonable.

New subsection 25(8C) would require a Minister who, having granted an extension of time, forms the opinion that it will not be possible to table the annual report by 31 October to table in the Parliament a copy of the Secretary's request for an extension of time, together with a statement setting out the period of extension granted, the Minister's reasons for granting the extension, the date by which the report will be provided to the Minister and the date by which the Minister will table the report (which must be no more than seven days after the date by which the report will be provided to the Minister).

New subsection 25(8D) would provide that if a Secretary fails to give a report to the Minister by 15 October or the date specified by the Minister in granting an extension of time, the Secretary must, within fourteen days, explain in writing to the Minister why the report was not provided as required. The Minister must table a copy of that statement within three sitting days of receiving it.

New subsection 25(8E) would provide that if:

a House of the Parliament is not sitting on the day by which a report is required to be tabled; and

it is not possible to table the report before that date; and  
the rules or orders of the House do not allow papers to be presented out of session;  
the report must be tabled within 5 sitting days of the House resuming.

**Item 17** inserts a new Schedule 4 to the Public Service Act which would modify sections 50DAA, 50DA, 50DB, 50DC and 50G of the Act so that they are capable of applying to staff of the Parliamentary Departments. Currently, these sections either do not apply, or apply in a limited manner, to the staff of the Parliamentary Departments. The Schedule would modify these sections so that the responsible authority would be able to exercise powers under:

section 50DAA, to allow the responsible authority, on the recommendation of the Merit Protection and Review Agency, to cancel a "non-appellable" promotion (generally, a promotion to a position at Senior Officer Grade C level or above) after it has taken effect;

sections 50DA, 50DB and 50DC, to allow the responsible authority to promote or transfer an officer on the advice of a Joint Selection Committee;

- section 50G, to allow the responsible authority to cancel a promotion before it has taken effect (for example, if the same officer has successfully applied for promotion to two positions).

(An explanation of the term "responsible authority" is provided in the notes to Item 15.)

**Item 18** is a transitional provision which would ensure that delegations made under the existing subsection 9(7H) of the Act which are in force when the Bill receives Royal Assent continue to have effect as if they had been made under subsection 9(7H) as amended by this Bill. Item 18 would also provide that the amendments to section 25 of the Public Service Act (relating to the tabling of annual reports) would apply for the first time in relation to annual reports for the 1995-96 financial year. Existing arrangements would apply in relation to 1994-95 annual reports.



